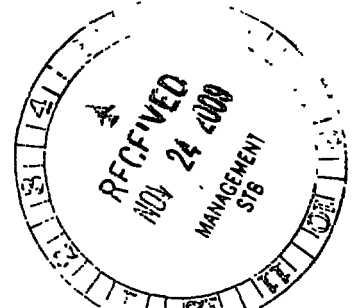


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November 24, 2009

ENTERED  
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**BY HAND DELIVERY**

Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

Re: ***Massachusetts Department of Transportation – Acquisition Exemption – Certain Assets of CSX Transportation, Inc.***  
**STB Finance Docket No. 35312**

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and eleven copies of the Massachusetts Department of Transportation's Motion to Dismiss (the "Motion"), including all supporting exhibits. A computer disk containing the text of the Motion in electronic form is included with this filing.

We are requesting expedited consideration of the Motion for the reasons set forth in the filing.

Please acknowledge receipt of the Motion by time stamping the eleventh copy and returning it to the courier for return to me. If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7852 or by email: [kobrien@bakerandmiller.com](mailto:kobrien@bakerandmiller.com).

Respectfully submitted,

Keith G. O'Brien

Attorney for Massachusetts  
Department of Transportation

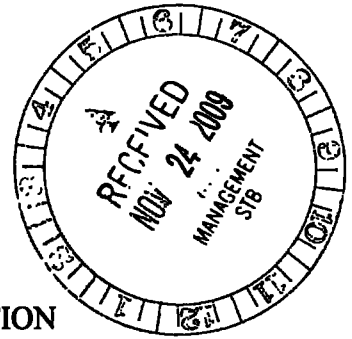
Enclosures



226065

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35312



MASSACHUSETTS DEPARTMENT OF TRANSPORTATION  
– ACQUISITION EXEMPTION –  
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

MOTION TO DISMISS

**EXPEDITED CONSIDERATION REQUESTED**

ENTERED  
Office of Proceedings

NOV 24 2009

Part of  
Public Record

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Attorneys for Massachusetts  
Department of Transportation

November 24, 2009

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Finance Docket No. 35312

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MASSACHUSETTS DEPARTMENT OF TRANSPORTATION  
– ACQUISITION EXEMPTION –  
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

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MOTION TO DISMISS

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The Commonwealth of Massachusetts, acting by and through its Department of Transportation (“MassDOT”),<sup>1</sup> hereby requests that its verified Notice of Exemption (the “Notice”) concurrently filed in the above-docketed proceeding in connection with MassDOT’s proposed acquisition of certain assets of CSX Transportation, Inc. (“CSXT”) be dismissed, because the transaction encompassed by the Notice does not fall under the Board’s jurisdiction. As set forth in the Notice, MassDOT proposes to acquire the real property and physical assets of certain CSXT-owned and operated rail lines in Massachusetts (the “Railroad Assets”) as described more fully below. The purpose of this transaction is to facilitate the expansion of commuter rail passenger service in the Commonwealth while, at the same time, providing for the adequate provision of rail

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<sup>1</sup> Effective November 1, 2009, the Commonwealth of Massachusetts has reconfigured its transportation agency structure. As relevant to this transaction, the agency that had been known as the Executive Office of Transportation and Public Works (“EOTPW”) has been eliminated, and, in EOTPW’s place, the Commonwealth has established MassDOT. Many of the agreements underlying the subject asset transaction predate MassDOT’s existence, and thus were executed by and between CSXT and EOTPW. Where appropriate, the parties have amended those agreements to substitute MassDOT for EOTPW. Regardless of whether the agreements have been amended, MassDOT is the successor in interest to EOTPW’s contractual obligations by operation of law.



freight service and intercity passenger rail service by the National Railroad Passenger Corporation (“Amtrak”) over the Railroad Assets.

MassDOT will acquire title to the Railroad Assets, but CSXT will retain a perpetual, exclusive freight easement over those assets to fully preserve CSXT’s right and obligation to provide all common carrier freight service. Joint freight and commuter rail operations over certain of the Railroad Assets will be governed by a new agreement between the Massachusetts Bay Transportation Authority (“MBTA”), which will operate the commuter rail service,<sup>2</sup> and CSXT. Amtrak operations will continue to be governed by an extant 1999 agreement between Amtrak and CSXT until such time as the MBTA and Amtrak enter into an agreement to replace the 1999 agreement. CSXT, however, intends to sell its retained permanent and exclusive freight common carrier easement over certain portions of the Railroad Assets, as specified below, to Massachusetts Coastal Railroad, LLC (“Mass Coastal”), a Class III short line carrier that will replace CSXT as the rail freight service provider on those portions of the Railroad Assets.<sup>3</sup>

In connection with the subject transaction, MassDOT, MBTA, and CSXT have negotiated carefully-crafted agreements ensuring that CSXT will be able to exercise its permanent and exclusive freight operating easement rights to fulfill all current and reasonably foreseeable freight service needs of shippers located along the Railroad Assets. Likewise, MassDOT, MBTA, and Mass Coastal are negotiating similar agreements ensuring that Mass Coastal will be able to exercise its permanent and exclusive freight easement over the South Coast Assets. Moreover, neither

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<sup>2</sup> MBTA contracts with Massachusetts Bay Commuter Railroad LLC to operate the commuter rail passenger service.

<sup>3</sup> CSXT’s anticipated conveyance of its freight service easement rights to Mass Coastal is the subject of a separate, but concurrently-filed, minor application. See Massachusetts Coastal Railroad, LLC – Acquisition – CSX Transportation, Inc., STB Finance Docket No. 35314 (the “CSXT - Mass Coastal Transaction”).

MassDOT nor MBTA (which will monitor operations over the Railroad Assets) will acquire the right or the ability to provide or control freight service over the Railroad Assets. For these reasons, MassDOT requests – (1) a Board determination, pursuant to Maine, DOT – Acq. Exemption, ME. Central R. Co., 8 I.C.C.2d 835 (1991) (“State of Maine”) and the numerous subsequent Board decisions addressing State of Maine, that MassDOT’s acquisition of the Railroad Assets is not a rail line acquisition transaction subject to the Board’s jurisdiction under 49 U.S.C. 10901; and (2) that, accordingly, MassDOT’s Notice in this proceeding be dismissed.

The Commonwealth of Massachusetts and CSXT have been engaged in lengthy negotiations to complete the terms of the subject transaction, and they have committed to a timetable for the consummation of the first stage of this transaction, which will entail MassDOT’s acquisition of certain of the Railroad Assets on or before May 14, 2010. Failure to complete the first phase of the subject transaction by that deadline could complicate execution of the transaction, including the later stages of the property sale, and would be detrimental to the Commonwealth’s transportation planning and funding initiatives, which are linked to the orderly acquisition of the Railroad Assets. To ensure that these deadlines are met, MassDOT respectfully requests expedited consideration, allowing a Board decision by no later than March 22, 2010, and an effective date of that decision of April 24, 2010.<sup>4</sup>

## **BACKGROUND**

MassDOT is an instrumentality of the Commonwealth of Massachusetts. Succeeding to the roles and functions of EOTPW, MassDOT is the Commonwealth’s principal authority for

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<sup>4</sup> MassDOT has offered below a detailed procedural schedule that it recommends be utilized for this proceeding.

developing and implementing state transportation planning, policy, and programs,<sup>5</sup> and it is a non-carrier.

MassDOT and CSXT jointly identified an opportunity to improve commuter rail service while simultaneously preserving freight rail service over the Railroad Assets. MassDOT's acquisition of the Railroad Assets would allow it to increase the frequency and quality of commuter rail service, which is intended to reduce roadway congestion, lessen environmental impacts, and create economic development opportunities. MassDOT and CSXT also recognized the importance of maintaining reliable common carrier rail service to meet the current and reasonably foreseeable needs of shippers along the Railroad Assets.

MassDOT and CSXT have entered into agreements pursuant to which MassDOT will acquire the Railroad Assets, subject to CSXT's retention of permanent and exclusive freight easements over those properties. For the South Coast Assets (defined below), CSXT intends to sell its retained permanent and exclusive freight easement to Mass Coastal through the aforementioned CSXT-Mass Coastal Transaction. The Railroad Assets to be acquired by MassDOT generally consist of a total of 61.57 miles of real estate, right-of-way, and track material, an additional 9.71 miles of track and track structure excluding the underlying real estate, and an additional 5.92 miles of real estate excluding track material extending generally from Boston to points south and west of Boston as follows:<sup>6</sup>

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<sup>5</sup> See Norfolk Southern Railway Company, Pan Am Railways, Inc., et al. – Joint Control and Operating/Pooling Agreements – Pan Am Southern LLC, STB Finance Docket No. 35147, Comments of the Commonwealth of Massachusetts' Executive Office of Transportation and Public Works (filed Aug. 11, 2008) at 3.

<sup>6</sup> Pursuant to the terms of the Definitive Agreement between the Commonwealth of Massachusetts and CSXT, as amended (the Definitive Agreement and the First Amendment to that Agreement are attached hereto as Exhibits A and B, respectively), MassDOT will acquire, subject to certain

### **Boston Main Line-West (“BML-West”)<sup>7</sup>**

Between milepost QB 21.38 (at Framingham)<sup>8</sup> and milepost QB 44.30 (at Worcester), a total distance of approximately 22.92 miles.<sup>9</sup>

### **Boston Main Line – East (“BML-East”)<sup>10</sup>**

The BML-East property consists of the track assets, but not the underlying real estate, of the 9.71-mile rail line between milepost QB 1.12 (at CP Cove) to milepost QB 10.83 (at Newton/Riverside).<sup>11</sup> In 1962, the New York Central Railroad Company (“NYC”), CSXT’s

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specified limitations, the “Railroad Assets” (such as land, real property, rights-of-way, track and track materials and associated property, permits, licenses, liabilities and obligations) as set forth in Sections 1.1.1 through 1.1.6 of the Definitive Agreement.

<sup>7</sup> The east-west aligned Boston Main Line (also known as the Boston & Albany main line) consists of a much longer main line route extending from Boston South Station through Massachusetts to Albany, New York. MassDOT has elected to use the BML-West designation here to distinguish the subject segment of the Boston Main Line from the portion of that route owned by MBTA that lies immediately to the east of Framingham and that part of the Boston Main Line between QB 1.12 (at CP Cove) to milepost QB 10.83 (at Newton/Riverside) that is also a part of this transaction and is referred to herein as the BML-East.

<sup>8</sup> CSXT currently operates over the Boston Main Line east of Framingham pursuant to a 1985 trackage rights agreement (the “1985 Agreement”) between MBTA and CSXT (as successor to the rights of Conrail). The 1985 Agreement, as it has been amended over the years, is attached hereto as Exhibit C. In turn, MBTA currently operates over the BML-West pursuant to a 1994 trackage rights agreement. See Verified Statement of Steven Potter (CSXT Assistant Vice President – Network Planning and Joint Facilities) (“V.S. Potter”) at 4 (attached hereto as Exhibit D). Effective upon the Second Closing, described below, the 2009 Operating Agreement between MBTA and CSXT will replace the 1994 trackage rights agreement for all but the section of the BML-West between mileposts 21.38 and 22.40, which will be governed by the 1985 Agreement, rather than by the 2009 Operating Agreement.

<sup>9</sup> All locations and mileposts listed herein are located in the Commonwealth of Massachusetts.

<sup>10</sup> CSXT maintains and dispatches the BML-East. See Sec. 4.03 of the 1985 Agreement (allocating dispatching of the Main Line to CSXT) and Sec. 5.04 (allocating maintenance of the Main Line to CSXT).

<sup>11</sup> CSXT has represented that it owns the track assets that constitute the BML-East, but that it does not own the underlying real estate, which was conveyed by a CSXT predecessor to the Massachusetts Turnpike Authority in 1962.

predecessor in interest, conveyed to the Massachusetts Turnpike Authority (“MTA”) the land underlying the BML-East. In so doing, however, NYC retained a permanent and exclusive easement to permit NYC and its successors and assigns to provide freight common carrier service over the subject property. A copy of that 1962 Deed memorializing NYC’s (now CSXT’s) retained freight easement (the “MTA-NYC Deed”) is attached hereto as Exhibit E. For these reasons, CSXT’s sale of its property interests in the BML-East is subject to the continuation of CSXT’s pre-existing permanent and exclusive freight easement rights.<sup>12</sup> As indicated above, operations over the BML-East are governed by the 1985 Agreement.

#### **Boston Terminal Running Track**

Between milepost QBB 0.0 to milepost QBB 1.10, a total distance of 1.10 miles.

#### **Grand Junction Branch**

This transaction involves the transfer of portions of the Grand Junction Branch between milepost QBG 0.00 and milepost QBG 2.70, and between milepost QBG 5.70 and milepost QBG 7.87, a total distance of 4.87 miles.<sup>13</sup>

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<sup>12</sup> The intervening portion of the Boston Main Line between milepost QB 10.83 (the west end of the BML-East) and milepost QB 21.38 (the east end of the BML-West) was acquired by MBTA in 1973 pursuant to a transaction between MBTA and the trustees of the bankrupt Penn Central Transportation Company (“PCTC”), predecessors in interest of CSXT. As with the MTA-NYC transaction, PCTC’s trustees conveyed ownership of the line from QB 10.83 to QB 21.38 subject to the trustees’ retention of a freight common carrier easement. The deed setting forth the trustees’ (now CSXT’s retained easement) is attached hereto as Exhibit F.

<sup>13</sup> According to CSXT, the foregoing milepost description of the Grand Junction Branch represents the full scope of CSXT’s ownership interest in this rail line, and CSXT does not have any ownership interest to convey in the intervening section of this branch between milepost QBG 2.70 and milepost QBG 5.70.

### **New Bedford Secondary**

Between milepost QN 13.40 (at Cotley Junction) and milepost QN 31.80 (at New Bedford), including the North Dartmouth Industrial Track (also known as the Watuppa Branch) between milepost QND 0.00 and QND 0.08<sup>14</sup> and *excluding* New Bedford Yard, a total distance of 18.48 miles.

### **Fall River Secondary**

Between milepost QNF 0.0 (at Myricks) to milepost QNF 14.2 (at Fall River – Massachusetts state line), a total distance of 14.2 miles.

The agreements between MassDOT and CSXT contemplate that the Railroad Assets will be conveyed in two stages, which the parties refer to, respectively, as the “First Closing” and the “Second Closing.”

#### **A. The First Closing and South Coast Assets Transaction**

MassDOT and CSXT anticipate that the First Closing will occur on May 14, 2010. At the First Closing, CSXT will convey to MassDOT the assets that constitute the Grand Junction Branch,

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<sup>14</sup> CSXT previously sold the track and material on the Watuppa Branch between milepost QND 0.08 and QND 6.00 to the Bay Colony Railroad Corporation (“BCLR”), and leased the underlying real estate to BCLR. See Bay Colony Railroad Corporation – Acquisition and Operation Exemption – CSX Transportation, Inc., as Operator for New York Central Lines, LLC, STB Finance Docket No. 34446 (STB served Jan. 16, 2004). In this transaction, CSXT will convey the full scope of its ownership interest in the Watuppa Branch to MassDOT, subject to BCLR’s rights and interests and CSXT’s retained easement over the first 0.08 miles of the branch. Pursuant to the agreement between CSXT and MassDOT, CSXT will assign its interest in the BCLR lease to MassDOT. BCLR will continue to provide common carrier service over the 5.92 miles of the Watuppa Branch west of milepost QND 0.08, and MassDOT will acquire only the real estate underlying this section of the branch. Because of BCLR’s interest in 5.92 miles of the Watuppa Branch, MassDOT has excluded that 5.92 miles from the mileage total for the New Bedford Secondary.

the Boston Terminal Running Track,<sup>15</sup> the New Bedford Secondary, and the Fall River Secondary<sup>16</sup> (collectively, the “First Closing Assets”) subject to CSXT’s retention of the aforementioned permanent and exclusive freight easement.

At the time of the First Closing, CSXT will simultaneously sell to Mass Coastal CSXT’s retained common carrier permanent and exclusive freight easement over the South Coast Assets pursuant to a Purchase and Sale Agreement of Permanent Freight Easement (the “PSA”)<sup>17</sup> between Mass Coastal and CSXT.<sup>18</sup> CSXT’s conveyance of the South Coast Assets to MassDOT combined with CSXT’s simultaneous conveyance of its permanent and exclusive freight easement over the South Coast Assets to Mass Coastal will be referred to as the “South Coast Assets Transaction.”

#### **B. The Second Closing**

MassDOT and CSXT anticipate that the Second Closing – CSXT’s conveyance of the BML-West and BML-East to MassDOT, subject to CSXT’s retention (or, in the case of the BML-East, continued retention) of a permanent and exclusive freight easement – will occur on or before September 15, 2012. Upon consummation of the Second Closing, MBTA will assume basic oversight, management, maintenance, and dispatching over the BML-West and BML-East lines which are today maintained and dispatched by CSXT. MBTA’s and CSXT’s respective rights and

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<sup>15</sup> The Grand Junction Branch and the Boston Terminal Running Track are also collectively referred to in the transaction documents, and will be referred to herein, as the “BPY Assets.”

<sup>16</sup> The New Bedford Secondary and Fall River Secondary are also collectively referred to in the transaction documents, and will be referred to herein, as the “South Coast Assets.”

<sup>17</sup> The proposed transaction is more fully described in the CSXT - Mass Coastal Transaction as presented in STB Finance Docket No. 35314.

<sup>18</sup> In addition to the PSA, the parties will also accomplish the following additional steps as preconditions to the First Closing: (1) CSXT and Mass Coastal will execute an interchange agreement governing the exchange of freight traffic between CSXT and Mass Coastal; and (2) MBTA and MassCoastal will execute an operating agreement governing Mass Coastal’s liability and maintenance responsibilities relating to operations over the South Coast Assets.

obligations relating to MBTA, Amtrak, and CSXT operations over the BML-West will be governed by an agreement entitled (and hereinafter referred to as) the “2009 Operating Agreement” (attached hereto as Exhibit G), which will replace the 1994 Trackage Rights Agreement. As indicated above, however, the section of the BML-West between mileposts 21.38 and 22.40 will be governed by the 1985 Agreement (pursuant to the Fourth Amendment to that agreement), rather than by the 2009 Operating Agreement. Also, upon consummation of the Second Closing, the BML-East will continue to be governed by the 1985 Agreement (as amended), which agreement will provide that MBTA will assume maintenance and dispatching responsibilities over BML-East.

### **C. The CSXT Easements**

Paragraph 1.1 of the Definitive Agreement provides as follows:

[n]ot included in the Railroad Assets are [CSXT]’s reserved, retained, perpetual, easement to provide rail freight service . . . , which . . . easement shall (i) incorporate by reference the [MBTA-CSXT “2009 Operating Agreement”], as hereinafter defined; (ii) provide that [CSXT] has the exclusive right to provide freight rail service and for such other rights as may be mutually agreed upon as set forth above over such easement area; (iii) recognize [MassDOT]’s right to operate [additional trains] as more specifically described [in this agreement]; and (iv) include, subject to the provisions of Section 1.3 following, the rights of the National Railroad Passenger Corporation (“Amtrak”) to continue to operate on the Boston Main Line, pursuant to an Agreement between [CSXT] and Amtrak (the “Amtrak Agreement”), dated June 1, 1999, and all supplements thereto, or to any subsequent agreement between the MBTA and Amtrak which complies with the provisions of Section 1.3.2 hereof and which may supersede the Amtrak Agreement, or as required by law.

The 2009 Operating Agreement defines CSXT’s easement rights as those, “described in any deed or deeds transferring the [Railroad Assets] pursuant to the Definitive Agreement, which deed or deeds, when recorded, shall be attached hereto as Exhibit D.”<sup>19</sup>

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<sup>19</sup> 2009 Operating Agreement, Par. 1 (definition of “CSXT Easement”).



The terms of the retained CSXT permanent, exclusive freight easements are to be included in three separate deeds covering, respectively, the BPY Assets, the South Coast Assets, and the BML-West. The deeds are attached hereto as Exhibit(s) H-J. Specifically, the draft BPY Assets Deed<sup>20</sup> reserves for CSXT:

an EASEMENT IN GROSS . . . IN PERPETUITY (as hereinafter defined) FOR RAILROAD PURPOSES (as hereinafter defined) in, over or on the Property within the Land; including, but not limited to, the use of all the tracks or Trackage (as hereinafter defined) within the Property; but SUBJECT TO:

1. The terms, conditions and limitations of that certain Trackage Rights Agreement dated effective July 1, 1985 between Consolidated Rail Corporation and the Massachusetts Bay Transportation Authority, an independent authority within the jurisdiction of Grantee ("MBTA"), as amended...
- ...
3. Grantor [CSXT] and Grantee [MassDOT] agree that the [easement] is not retained to the exclusion of the use of the Property by Grantee and its assigns, except that Grantor shall be the exclusive provider of Rail Freight Service (as hereinafter defined), and as otherwise set forth in said 1985 Operating Agreement.
4. Transfer of the [easement] shall be governed by the provisions of Exhibit D and Exhibit E<sup>21</sup> attached hereto.<sup>22</sup>

The draft South Coast Assets Deed reserves for CSXT:

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<sup>20</sup> The three deeds are in draft form at this time. The parties to the subject transaction have agreed to the release of the attached draft deeds, however, because they believe that the easement terms and conditions relevant to this Board proceeding are unlikely to be changed materially. If, however, the deeds are materially altered after this filing, MassDOT will promptly so advise the Board, and, in so doing, will supply final versions of the deeds.

<sup>21</sup> Deed Exhibits D and E, which will govern possible future transfer of the subject easement to a third party, are common to all three of the Deeds. Deed Exhibit D sets forth the terms and conditions to which such third party transfers will be subject, while Exhibit E will set forth certain "Transferee Standards," that a would-be third party acquirer of the easement must satisfy before it may assume the subject easement rights.

<sup>22</sup> Exhibit H, draft BPY Assets Deed at 3.

an EASEMENT IN GROSS (the "CSXT South Coast Easement") IN PERPETUITY (as hereinafter defined) FOR RAILROAD PURPOSES (as hereinafter defined) in, over or on the Property within the Land; including, but not limited to, the use of all the tracks or Trackage (as hereinafter defined) within the Property (except the portion excluded as hereinafter described); but SUBJECT TO:

1. The terms, conditions and limitations of any South Coast Operating Agreement hereinafter entered into between any purchaser of the CSXT South Coast Easement ("Purchaser") and Massachusetts Bay Transportation Authority, an independent authority within the jurisdiction of Grantee ("MBTA") (said South Coast Operating Agreement or any existing operating agreement between Purchaser and MBTA being amended to include the Property, being hereinafter termed the "South Coast Operating Agreement").  
...
3. Grantor and Grantee agree that the CSXT South Coast Easement is not retained to the exclusion of the use of the Property by Grantee and its assigns, except that Grantor shall be the exclusive provider of Rail Freight Service (as hereinafter defined), and as otherwise set forth in said South Coast Operating Agreement.
4. Transfer of the CSXT South Coast Easement shall be governed by the provisions of Exhibit D and Exhibit E attached hereto.<sup>23</sup>

Finally, the draft BML-West Deed reserves for CSXT:

an EASEMENT IN GROSS . . . IN PERPETUITY (as hereinafter defined) FOR RAILROAD PURPOSES (as hereinafter defined) in, over or on the Property within the Land; including, but not limited to, the use of all the tracks or Trackage (as hereinafter defined) within the Property; but SUBJECT TO:

1. The terms, conditions and limitations of (a) the 2009 Operating Agreement between Grantor and Massachusetts Bay Transportation Authority, an independent agency within the jurisdiction of Grantee ("MBTA"), dated \_\_\_\_\_, and (b) that certain Trackage Rights Agreement dated effective July 1, 1985 between Consolidated Rail Corporation and the MBTA (said 2009 Operating Agreement and said Trackage Rights Agreement, as amended, altered, cancelled or terminated pursuant to their terms, being collectively termed the "Operating Agreements").  
...

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<sup>23</sup> Exhibit I, draft South Coast Assets Deed at 3.

2. Grantor and Grantee agree that the [easement] is not retained to the exclusion of the use of the Property by Grantee and its assigns, except that Grantor shall be the exclusive provider of Rail Freight Service (as hereinafter defined), and as otherwise set forth in said Operating Agreements.
3. Transfer of the CSXT Main Line Easement shall be governed by the provisions of Exhibit D and Exhibit E attached hereto.<sup>24</sup>

All three deeds include expansive definitions of the terms “Trackage,” “Railroad Purposes,” and “Rail Freight Service,” thus guaranteeing CSXT the “right to use all Trackage on the Property for the exclusive provision of Rail Freight Service.” In turn, “Rail Freight Service” is defined as “[t]he transportation by rail of property and movable articles of every kind, character and description over the Property, including but not limited to rail freight transportation service to current and future industries, customers and facilities located along the Property, and supporting activities . . .”<sup>25</sup>

The MTA-NYC Deed’s easement language has already extended to CSXT similar protections against interference with CSXT’s common carrier rights and obligations with respect to the BML-East, and, as indicated, MassDOT’s acquisition of the track assets on the BML-East will be fully subject to CSXT’s existing easement rights.

The exclusive freight easements that CSXT will retain continue in perpetuity until “abandoned or terminated, as provided in the Operating Agreements herein referenced . . .”<sup>26</sup> As discussed below, the 2009 Operating Agreement grants CSXT control over the abandonment or discontinuance of rail freight service on the BML-West line, and sets forth the terms and conditions

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<sup>24</sup> Exhibit J, draft BML-West Deed at 3.

<sup>25</sup> Draft BPY Assets Deed at 4, draft South Coast Assets Deed at 4, draft BML-West Deed at 4.

<sup>26</sup> Id.

pursuant to which CSXT's exclusive and permanent freight easement may be terminated pursuant to advance authority from the Board.

In addition to the exclusive, permanent freight easements that CSXT will retain, MassDOT's acquisition of the Railroad Assets pursuant to the Definitive Agreement (as amended) also is specifically subject to the rights of Amtrak to operate over the BML-East and BML-West pursuant to Amtrak's existing agreement with CSXT.<sup>27</sup> Amtrak's existing rights to operate over the BML-West are reflected in, and protected by, specific provisions in the BPY Assets Deed and the BML-West Deed.<sup>28</sup>

#### **D. Operations on the BPY Assets**

The Grand Junction Branch is used currently by CSXT, MBTA, and Amtrak to move trains, but not passengers. The use of the Grand Junction Branch by those parties is not expected to change materially as a result of the transaction described herein. The Boston Terminal Running Track is not currently used by CSXT, the MBTA, or Amtrak, but after the acquisition by MassDOT, MBTA expects to use the property to facilitate the storage of trains at the First Street Yard in South Boston.

MBTA and Amtrak operations on a portion of the Grand Junction Branch are currently governed by the 1985 Agreement between CSXT and MBTA.<sup>29</sup> MBTA's operations over the Boston Terminal Running Track are not governed by any existing operating agreement. The terms

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<sup>27</sup> Definitive Agreement, Section 1.3; see also V.S. Potter at 5; 2009 Operating Agreement at Par. 2.2(c)-(d).

<sup>28</sup> See draft BPY Assets Deed at Par. 5, and draft BML-West Deed at Par. 5.

<sup>29</sup> In fact, CSXT currently operates over several MBTA-owned and operated lines in southeastern Massachusetts pursuant to the 1985 Agreement. The terms of the 1985 Agreement have for nearly 25 years ensured that CSXT, and its freight service predecessor, Conrail, have been able to provide shippers with adequate, responsive freight common carrier service.

and conditions surrounding those operations, and CSXT's use of those tracks, will not materially change as a result of the proposed transaction, although MBTA and CSXT will revise the 1985 Agreement to reflect the change in ownership of the assets and CSXT's retained permanent freight easement.

#### **E. Operations on the South Coast Assets**

CSXT's current freight operations on the South Coast Assets are typical for low density feeder branches. Today, CSXT provides local service on the South Coast Assets five days per week, with CSXT's local trains serving New Bedford Secondary customers on three of those days, and Fall River Secondary customers twice per week. Such CSXT service generates roughly 1,900 carloads annually. MassDOT does not expect that service levels or carloads will increase dramatically following the South Coast Assets transaction, although MassDOT is optimistic that aggressive marketing efforts by Mass Coastal may warrant more frequent local service that could potentially reach to once daily service over the entire South Coast Assets lines.

Neither the MBTA nor Amtrak currently use the property. As described below, the parties expect that Mass Coastal, which intends to purchase CSXT's permanent and exclusive freight easement on the property, will run freight service on the South Coast Assets after MassDOT acquires the property. In the future, MassDOT and the MBTA intend to reconstruct the right of way to accommodate passenger service, as well as continued freight service, on the property.

As indicated above, CSXT anticipates at the time of the First Closing to sell its retained permanent and exclusive freight easement over the South Coast Assets to Mass Coastal. In turn, Mass Coastal will, upon acquisition of CSXT's permanent and exclusive freight easement, operate over the South Coast Assets and provide service to shippers located on the South Coast Assets in

accordance with its rights and obligations under its permanent and exclusive freight easement, and other, related agreements.

The PSA between CSXT and Mass Coastal does not contain any terms that would limit Mass Coastal's ability to provide common carrier freight service over the South Coast Assets. In addition to the PSA, however, MBTA (which will assume oversight responsibilities for the South Coast Assets) and Mass Coastal are negotiating a comprehensive operating agreement (the "MC Operating Agreement") comparable in scope to the 2009 Operating Agreement between MBTA and CSXT and to the 1985 Agreement between MBTA and CSXT (which governs, among other things, CSXT's trackage rights operations over the MBTA-owned portion of the Boston Main Line east of Framingham). The MC Operating Agreement will further establish the rights and responsibilities of MBTA (as manager of the South Coast Assets) and Mass Coastal (as provider of freight service and the entity responsible for track maintenance and dispatching functions).

At present, MBTA and Mass Coastal are still in the process of finalizing the terms of the MC Operating Agreement, but they have, in the meantime, concluded a Term Sheet that outlines the fundamental terms and conditions to be contained in the MC Operating Agreement. This Term Sheet is attached hereto as Exhibit K. The MC Operating Agreement will acknowledge Mass Coastal's exclusive right to provide freight service over the South Coast Assets, will memorialize Mass Coastal's obligations to maintain the subject rail assets and dispatch operations over them while these rail assets remain "Freight Only Rail Properties," and will contain certain allocation of liability provisions.<sup>30</sup> The Term Sheet also contemplates an unspecified future "Passenger Service Commencement Date," at which time the right of way will become "Joint Use" and MBTA will

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<sup>30</sup> See Term Sheet at 2-5.

assume the maintenance and dispatching obligations on the line, subject to appropriate provisions to ensure that Mass Coastal's continuing freight common carrier obligations to shippers on the South Coast Assets can be met.<sup>31</sup>

#### **F. Operations on the BML-West**

CSXT, MBTA and Amtrak all currently use the BML-West. Amtrak currently operates two daily trains (one in each direction) over the BML-West.<sup>32</sup> MBTA currently operates a total of 25 trains on the BML-West on each weekday, and ten trains each on Saturdays and Sundays.<sup>33</sup> After the acquisition of the property by MassDOT, MBTA expects to increase commuter rail passenger service consistent with the operating windows described below, although it has not yet determined the precise number of additional trains that will be added to the schedule or when they may be added. MassDOT does not expect any change in the use of the property by Amtrak.

MBTA and CSXT have entered into the aforementioned 2009 Operating Agreement, which establishes the respective terms and conditions for MBTA's commuter rail operations, CSXT's freight operations, and Amtrak's intercity passenger operations over the BML-West.<sup>34</sup> In particular, the 2009 Operating Agreement divides the BML-West property into "Joint Usage Rail Properties" ("JURP" – i.e., the Framingham-Worcester main line) over which MBTA, Amtrak, and CSXT will

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<sup>31</sup> See *id.* at 2-3.

<sup>32</sup> See Amtrak Lake Shore Limited train service schedule attached hereto as Exhibit L.

<sup>33</sup> See MBTA Framingham/Worcester Line train service schedules (effective May 18, 2009), attached hereto as Exhibit M.

<sup>34</sup> Notwithstanding this subsection, the portion of the BML-West between mileposts 21.38 and 22.40 shall continue to be governed by the 1985 Agreement, rather than the 2009 Operating Agreement.

possess the right to operate,<sup>35</sup> and “Freight Only Rail Properties” (i.e., the Framingham Yard Lead Tracks, Westborough Yard Lead Tracks, and Worcester Yard Lead Tracks) which CSXT will retain ownership of and over which CSXT will possess priority operating rights.

The 2009 Operating Agreement provides that MBTA (or a contractor or other third party so designated by MBTA) will exercise “the performance of the management, regulatory and operational control of any and all rail service over [the JURP] including, without limitation, dispatching control of all trains, provided that such control shall be exercised in a manner which does not violate CSXT[’s] rights to use [the JURP].”<sup>36</sup> That agreement also provides that MBTA will provide all maintenance services for the JURP.<sup>37</sup> Moreover, the 2009 Operating Agreement specifies the standards that will govern MBTA’s performance of these functions.

Section 2.2 of the 2009 Operating Agreement sets forth limitations on CSXT’s operations over the JURP pursuant to the following, specifically-delineated operating “windows” designed to facilitate the fluid movement of MBTA commuter rail trains and Amtrak intercity passenger trains while at the same time permitting for the efficient movement of CSXT freight traffic:

- A.M. Peak Window: from 5:00 a.m. (05:00) to 09:45 a.m. (09:45), which shall be the Priority Passenger Morning Rush Hour, allowing one scheduled freight train to operate in one direction only from Westborough to Worcester during each such A.M. Peak Window (with additional freight trains allowed on a non-priority basis);
- P.M. Peak Window: from 4:00 p.m. (16:00) to 10 p.m. (22:00), which shall be the Priority Passenger Evening Rush Hour, allowing one scheduled freight train in one

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<sup>35</sup> Amtrak operations over the Boston Main Line are governed by an agreement between CSXT and Amtrak dated as of June 1, 1999 (the “Amtrak Agreement”). The 2009 Operating Agreement provides that, after MassDOT’s acquisition of the BML-West, Amtrak operations over that line segment will continue to be governed by the Amtrak Agreement until such time as MBTA and Amtrak may enter into a separate agreement to replace or to amend the Amtrak Agreement.

<sup>36</sup> 2009 Operating Agreement, Par. 2.4(a).

<sup>37</sup> Id., Par. 2.5(a).



direction only from Westborough to Worcester during each such P.M. Peak Window (with additional freight trains allowed on a non-priority basis);

- **Midday Window:** from 09:46 a.m. (09:46) to 3:59 p.m. (15:59), which shall be the Mid-Day Window, allowing a mixed passenger/freight use with passenger rail priority consistent with the general protocols described in paragraph 2.2(c) below. The MBTA may add up to twelve (12) additional MBTA passenger trains beyond those scheduled as of June 30, 2009, and CSXT may add up to four (4) additional freight trains beyond those freight trains operating as of June 30, 2009, provided that by mutual agreement in writing, the Parties may expand the number of trains beyond such additional trains;
- **Late Night Window:** from 10:01 p.m. (22:01) to 12 midnight, which shall be the Late Night Window, there shall be a mixed passenger/freight use allowing scheduled MBTA passenger trains running in scheduled slots to have priority to run in either direction; either party may increase the number of its trains, provided that any added train does not materially interfere with the previously approved scheduled trains of the other party; subject to the foregoing conditions, the number and schedules of trains of each party shall be established by mutual agreement, not to be unreasonably withheld, delayed or conditioned; and
- **Midnight Window:** from 12:01 a.m. (00:01) to 4:59 a.m. (04:59), which shall be the Midnight Window, priority shall be given to freight use, with passenger rail priority for the three (3) scheduled MBTA passenger trains (each in one direction only) during the Midnight Window but subject to adjustments to such schedules of up to 10 minutes for each such train (with additional passenger trains allowed on a non-priority basis).

Paragraphs 2.2(c) and (d) of the 2009 Operating Agreement set forth additional provisions bearing on the respective rights and obligations of MBTA and CSXT with respect to the JURP as follows:

(c) Subject to and consistent with the provisions of paragraph (b) above, the MBTA shall establish a dispatching protocol for the Joint Usage Properties that (i) will minimize negative impacts on each other's trains in all time periods, (ii) will allow reasonable flexibility within the structure described herein in order to accommodate the movement of each other's trains (including without limitation scheduled and unscheduled CSXT trains), provided however that in all circumstances a scheduled commuter rail train shall hold a priority for as long as it maintains its schedule within a period no longer than ten minutes later than its scheduled time, and (iii) will accommodate the movements of Amtrak trains in accordance with the Amtrak Agreement or any successor agreement between MBTA and Amtrak and applicable law.

(d) The MBTA will schedule its trains as it determines necessary in compliance with this Section 2.2. Should the MBTA seek to schedule passenger trains not in

compliance with Section 2.2 ("Non-conforming Trains"), it shall submit such request to CSXT for its prior approval, which approval if but only if the operation of such Non-conforming Trains does not interfere with or impair CSXT's operations or interfere with or impair CSXT's performance of its obligations to Amtrak under the Amtrak Agreement (if then in effect), shall not be unreasonably withheld, conditioned, or delayed.

The 2009 Operating Agreement assures that both passenger and freight trains are handled efficiently on the BML-West, and that CSXT – (1) possesses sufficient rights, of a permanent and exclusive nature, to provide common carrier freight service over that line; and (2) is able to fulfill its obligations to Amtrak under the Amtrak Agreement. As they may bear on the subject Motion to Dismiss, specific operational aspects of the 2009 Operating Agreement are reviewed in the Discussion section to follow.

The 2009 Operating Agreement reiterates the intention of the parties that the subject transaction will not impose undue limitations or restrictions on CSXT's ability to fulfill its freight common carrier obligations or its obligations to Amtrak under the Amtrak Agreement. Specifically, that agreement states that:

Subject to the provisions of this Agreement, CSXT may use the CSXT Easement (i) to provide CSXT Freight Rail Service on, and to enter upon and utilize the existing tracks and related operating facilities on those MBTA Rail Properties described on Exhibit A hereto as "Joint Usage Rail Properties," and (ii) perform its obligations to Amtrak under the Amtrak Agreement and as provided by law, *provided however*, that CSXT's use of such properties shall be subject to the conditions set forth in this Agreement, and *provided further* that MBTA covenants and agrees that it will not transport, and it will not grant any rights with respect to, or otherwise permit any Person other than CSXT to transport freight over such Joint Usage Rail Properties, but the Parties agree that the MBTA shall have the right to use the Joint Usage Rail Properties in accordance with the operating windows described in Section 2.2(b) below to transport baggage and other equipment and material for use by or for the MBTA, its agents or contractors. The access rights granted herein are granted for the purpose of permitting the CSXT Rail Service, including without limitation, permitting CSXT to operate freight trains and related switching movements and CSXT shall have access to all running, side, switching, yard, and interchange tracks included in Joint Usage Rail Properties and existing on the Effective Date of this

Agreement, and necessary for the provision of the CSXT Rail Service, all subject to and consistent with the conditions set forth herein.<sup>38</sup>

### **G. Operations on the BML-East**

As with the BML-West, CSXT, MBTA and Amtrak all currently use the BML-East. Amtrak currently operates two daily trains (one in each direction) over the BML-East.<sup>39</sup> MBTA currently operates a total of 41 trains on the BML-East on each weekday, a total of 18 trains on Saturdays, and a total of 16 trains on Sundays.<sup>40</sup> In keeping with its BML-West plans, MBTA expects to increase commuter rail passenger service consistent with the operating windows described below after MassDOT acquires the property, although MBTA has not yet determined the precise number of additional trains that will be added to the schedule or when they may be added. MassDOT does not expect any change in the use of the property by Amtrak. MassDOT understands that CSXT operates fewer trains over the BML-East than it does over the BML-West, because certain CSXT trains operate west of Framingham only.

MBTA and CSXT service on the CSXT-owned BML-East track assets is currently governed by the terms of the 1985 Agreement (as amended), and CSXT maintains and dispatches that line.<sup>41</sup> As is reflected in the attached draft 4<sup>th</sup> Amendment to the 1985 Agreement, MBTA will, upon MassDOT's acquisition of the BML-East track assets, assume responsibility for maintaining and

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<sup>38</sup> 2009 Operating Agreement, Par. 2.1.

<sup>39</sup> See Amtrak Lake Shore Limited train service schedule attached hereto as Exhibit L.

<sup>40</sup> See MBTA Framingham/Worcester Line train service schedules (effective May 18, 2009), attached hereto as Exhibit M.

<sup>41</sup> CSXT will retain the obligation for Amtrak's operations over the BML-East pursuant to the Amtrak Agreement, until such time as MBTA and Amtrak may enter into a separate agreement to replace or to amend the Amtrak Agreement.

dispatching this line.<sup>42</sup> The 4<sup>th</sup> Amendment will also, of course, account for the change in ownership interest. At the same time, however, MBTA and CSXT have agreed that their respective rights to run trains over the BML-East lines as set forth in the 1985 Agreement will remain essentially unchanged, so that, from an operating perspective, the sale of the BML-East track assets will not disrupt the operating status quo. Specifically, the BML-East tracks, which are currently “Conrail [CSXT] Rail Properties” under the 1985 Agreement, will be re-designated as “MBTA Rail Properties” (just as the portion of the Boston Main Line between milepost QB 10.83 and milepost QB 21.38 is today, due to MBTA’s long-standing ownership of that line segment). Once so re-designated, the BML-East Lines will be governed by the same terms and conditions in the 1985 Agreement applicable to all other MBTA Rail Properties.

## DISCUSSION

Ordinarily, the acquisition of an active rail line by a non-carrier, including a state or a state entity like MassDOT, requires Board approval under 49 U.S.C. 10901. See Common Carrier Status of States and State Agencies, 363 I.C.C. 132, 133 (1980), aff’d sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). A long line of cases beginning with the seminal State of Maine decision, however, hold that the Board does not have jurisdiction over – and that Board authorization is therefore not required – for transactions in which the common carrier rights and obligations do not transfer with the physical assets. See State of Maine, 8 I.C.C.2d at 836-37; see also, e.g., New Mexico Department of Transportation – Acquisition Exemption – Certain Assets of BNSF Railway Company, STB Finance Docket No. 34793 (STB served Feb. 6, 2006), slip op. at 2 (“New Mexico DOT”).

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<sup>42</sup> See Exhibit N – 4<sup>th</sup> Amendment to 1985 Agreement.

The focal point of a State of Maine-style transaction is the selling railroad's retention of a permanent easement over the assets that will enable that railroad to continue, respectively, to assert and to fulfill its common carrier rights and obligations. See The Port of Seattle – Acquisition Exemption – Certain Assets of BNSF Railway Company, STB Finance Docket No. 35128 (STB served Oct. 27, 2008), slip op. at 3 (“Port of Seattle”). In that regard, to find that it lacks jurisdiction over the transaction, the Board must be assured that the railroad proposing to transfer physical assets has preserved, through its retained easement and related documents, sufficient rights to conduct common carrier freight operations without material or unreasonable interference from the new asset owner (usually a state or state subdivision, such as MassDOT). See Metro Regional Transit Authority – Acquisition Exemption – CSX Transportation, Inc., STB Finance Docket No. 33838 (STB served Oct. 10, 2003), slip op. at 4 (“Akron Metro”); New Jersey Transit – Acq. Exempt. – Certain Assets of Conrail, 4 S.T.B. 512, 514 (2000) (“NJT/Bordentown”) (for the Board to find that it lacks jurisdiction over an asset sale, the agency must be satisfied that the transferor railroad “has retained a permanent easement and [that] it has sufficient interest and control over the line to permit it to carry out its common carrier obligation”).

In this transaction, all of the rail properties to be sold will be governed by “shared use” arrangements – whether (i) between CSXT and MBTA under the 1985 Agreement (as will be amended) which will govern BPY Assets operations, BML-East operations, and, to a limited extent, BML-West Assets operations, or the 2009 Operating Agreement that will govern operations over most of the BML-West Assets operation – among MBTA, CSXT, and, where applicable, Amtrak, or (ii) between MBTA and Mass Coastal under the Term Sheet and to-be-completed MC Operating Agreement that will govern South Coast Assets operations, each of which accounts for the current

operational state of affairs and provides for anticipated capacity and operating changes. Such “shared use” arrangements can be so structured to enable the acquiring state entity to avail itself of the State of Maine construct, and to obtain a Board finding (frequently essential to consummation of the proposed transaction) that the asset sale does not fall within the Board’s jurisdiction. Upon proper showing, the Board has found that the State of Maine construct can and does apply to transactions that provide for shared freight and passenger use.<sup>43</sup>

MassDOT’s proposed acquisition of the Railroad Assets is structured to satisfy all of the criteria of State of Maine, and its progeny. In fact, the proposed transaction represents a successful public-private partnership designed to accomplish three important Commonwealth objectives – (1) preserving freight common carrier service on low-density freight lines [the South Coast Assets]; (2)

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<sup>43</sup> The Board’s evaluation processes in shared use State of Maine-style transactions were recently spelled out as follows:

To balance the development of mass transit with the retention of freight rail service, the freight carrier need not necessarily retain full control. Instead, the Board examines in each case whether the agreements between the parties continue to give the freight carrier the ability to conduct its existing and reasonably foreseeable freight operations so that it can satisfy its common carrier obligation.

While the freight carrier must continue to have a permanent easement or its equivalent to provide freight service, the public agency acquiring the right-of-way and track may negotiate terms and conditions with the freight carrier necessary to provide reliable commuter service or protect the agency’s investment so long as such terms and conditions do not unreasonably interfere with freight rail service. Thus, the easement or the operating agreement may restrict freight operations to specific parts of the day, provided that the window for exclusive freight operations is adequate to satisfy the service needs of freight shippers. Likewise, the public agency may assume responsibility for maintaining the line and dispatching freight operations if the operating procedures are reasonable and do not discriminate against freight service, and if the freight carrier has the right to inspect and to request prompt repair of any track defects.

Maryland Transit Administration – Petition for Declaratory Order, STB Finance Docket No. 34975 (STB served Sept. 19, 2008), slip op. at 4-5 (“MTA-II”) (footnotes citing to various other State of Maine-style decisions that supporting the propositions discussed above omitted).

securing a future rail passenger corridor along the South Coast Assets; and (3) promoting enhanced commuter rail passenger service over an important commuter and freight rail corridor [the BML-West], while preserving CSXT's competitive freight service into and out of eastern Massachusetts. Moreover, the transaction will achieve such objectives while establishing a critical balance between maintaining important freight rail operations and meeting growing demand for rail passenger service. To balance these important transportation goals, MassDOT (along with MBTA), CSXT, and Mass Coastal have taken a responsible and comprehensive approach to the transaction contemplated herein.

The South Coast Assets component of the transaction will not materially affect freight operations on the involved lines. MassDOT does not anticipate any significant post-transaction changes in service on the South Coast Assets in the near term, once common carrier operations on the line become Mass Coastal's responsibility, because there are no immediate plans for MBTA to undertake track improvement activities on the lines (although MBTA does plan to begin such efforts in a few years). In fact, MBTA will not assume responsibility for maintaining or dispatching these lines until such time as any such track improvement activities (tied to preparing the lines for commuter rail passenger service begin) begin, and it is only at that time that MBTA may insist upon the sort of operating windows that could potentially restrict Mass Coastal's freight operations during certain peak passenger operating windows.. If anything, MassDOT's stake in the property will demonstrate a commitment to shippers and may permit for more investment in the lines' infrastructure. Moreover, although MassDOT and MBTA have longer-range plans to implement commuter rail passenger service on these lines (one of the major considerations that led to MassDOT's decision to acquire the subject rail assets for future passenger rail corridor

development), the South Coast Assets' light density freight branch line characteristics clearly indicate that such future establishment of passenger service could and would easily provide for the continuing needs of freight shippers on the South Coast Assets.

As indicated above, MBTA and Mass Coastal are in the process of completing an agreement (the MC Operating Agreement) setting forth Mass Coastal's and MBTA's respective commitments and obligations with respect to the South Coast Assets. That prospective agreement – preceded by the attached Term Sheet (Exhibit K) – will contemplate that Mass Coastal's nearer term freight-only operations will convert into a situation where MBTA and Mass Coastal will share the use of the South Coast Assets lines. The Term Sheet and the to-be-concluded MC Operating Agreement do and will recognize and protect Mass Coastal's exclusive rights and obligations to provide adequate service to shippers located on the South Coast Assets. Because the South Coast Assets currently have, and are expected to continue to have, relatively light freight volumes requiring the provision of modest local switching services (typical of light-density branch lines) to meet shipper needs, MassDOT and MBTA are confident that Mass Coastal's freight service obligations can and will easily be accommodated under a shared-use arrangement.

In fact, MassDOT takes very seriously its commitments to CSXT and to Mass Coastal and its assurances to the Board contained in this Motion that MassDOT will not materially interfere with the provision of rail freight service on the Railroad Assets, and it acknowledges that the Board can and will hold MassDOT to its assurances, especially where the precise terms of operating agreements are yet to be completed and/or may be revised over time.<sup>44</sup> For the same reason,

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<sup>44</sup> See Port of Seattle, slip op. at 5 (noting, in the absence of a finalized operating agreement between the asset owner and the not-yet selected rail freight service provider that would assume the reserved freight easement rights, that the Board “will hold the parties to their assurances to refrain



MassDOT has made clear to MBTA (and MBTA has agreed) that MBTA's operating agreements with CSXT and Mass Coastal, however they may be adjusted or revised in the future, must not undercut MassDOT's commitments and assurances in such a way that could later raise questions about MassDOT's status before this agency.

In addition, the Definitive Agreement between MassDOT and CSXT calls for a measured and careful approach toward implementing the BML-West and BML-East transaction (the Second Closing). To begin with, the parties contemplate that the Second Closing will take place following anticipated track and track clearance improvements that will accommodate higher train counts, facilitate double stack intermodal train service, and generally provide for more efficient and fluid operations for all participating rail operations – MBTA, Amtrak, and CSXT.<sup>45</sup>

In short, the transactions contemplated by MassDOT and CSXT, and the agreements among the various parties that will govern post-transaction operations will assure that CSXT can continue to provide adequate common carrier rail freight service on the BML-West and the BML-East, and that Mass Coastal (as the designated purchaser of CSXT's South Coast Assets permanent and exclusive freight easement) can provide adequate common carrier rail freight service over the South Coast Assets. MassDOT will not, through the series of asset acquisitions encompassed by the simultaneously-filed Notice in this docket, acquire any common carrier obligation, and, accordingly, the notice of exemption should be dismissed.

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from interfering materially with the third-party operator's right and obligation to provide rail freight service").

<sup>45</sup> See Definitive Agreement at Par. 4 (Clearance Work) and Exhibit F of the Definitive Agreement ("Clearance Work Agreement"), which establish the obligations of MBTA and CSXT to undertake in advance of the Second Closing certain prescribed lateral and horizontal clearance projects (such as raising clearances under bridges and undercutting tunnels) along the Boston Main Line.

MassDOT has chosen to undertake this transaction in partnership with MBTA to promote and to expand MBTA's mass transportation services over strategic rail corridors, while working with CSXT and Mass Coastal to carve out adequate provision for the continuation of important freight common carrier service over the same corridors by established freight common carriers. Because the transaction is designed to advance the Commonwealth's interest in promoting mass transportation, and leaves for third parties the rights and obligations to provide freight common carrier service (ensured by the critical freight common carrier service-protecting provisions in the agreements governing the transaction), the Board, by statute, does not have jurisdiction, and thus no agency action is required to permit the transaction to proceed. Specifically, "the Board does not have jurisdiction . . . over mass transportation provided by a local government authority."<sup>46</sup>

#### **A. General Provisions**

CSXT will retain a permanent and exclusive easement to conduct rail freight operations on the BPY Assets, BML-West, BML-East, and the South Coasts Assets, but it will sell its easement over the South Coast Assets to Mass Coastal. The related easement-protective provisions of the respective deeds and the Definitive Agreement (as amended) will remain in place for as long as the

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<sup>46</sup> 49 U.S.C. 10501(c)(2). See Massachusetts Bay Commuter Railroad Company, LLC – Petition for Declaratory Order, STB Finance Docket No. 34332 (STB served Jun. 5, 2003); Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, and Acquisitions of Control; and Procedures for Surface Transportation Board Consideration of Safety Integration Plans in Cases Involving Railroad Consolidations, Mergers, and Acquisitions of Control, STB Ex Parte No. 574, FRA Docket No. 1999-4985, Notice No. 4 (served March 8, 2002), slip op. at 58 n. 14 ("[u]nder 49 U.S.C. 10501(c), the Board does not have jurisdiction over mass transportation (commuter service) provided by a local governmental entity. Thus, a transaction involving a railroad subject to the STB's jurisdiction and a commuter railroad 'is now a one railroad transaction over which [the Board does] not have jurisdiction...'") (quoting Norfolk & Western Railway Company – Petition for Declaratory Order – Lease of Line in Cook & Will Counties, IL, To Commuter Rail Division of the Regional Transp. Auth. of Northeast Illinois, STB Finance Docket No. 32279 (STB served Feb. 3, 1999)).

easements exist. The BPY Assets, BML-West, and South Coast Assets easements, for example, would terminate only if – (1) CSXT or Mass Coastal, at their discretion, obtains regulatory authority to abandon or discontinue any portion of their respective operations over the easements; or (2) after a continuous three-year period of freight rail inactivity, MassDOT or MBTA pursues and obtains regulatory authority pursuant to an adverse abandonment or discontinuance proceeding to terminate CSXT's or Mass Coastal's operations over the subject portion(s) of their respective permanent and exclusive freight easements.<sup>47</sup>

As indicated above, Deed Exhibits D and E, have or will contain certain terms and conditions governing the future transfer of CSXT's retained permanent and exclusive freight easements. Reflecting the provisions of the South Coast Assets Deed, the PSA precludes Mass Coastal from assigning or otherwise transferring the permanent and exclusive freight easement acquired from CSXT to anyone other than a subsidiary or commonly-controlled affiliate of Mass Coastal without advance written consent of both CSXT and MassDOT.<sup>48</sup>

As indicated throughout the agreements associated with the proposed transaction, MassDOT will purchase the BML-West, BML-East, BPY Assets, and South Coast Assets, and it will engage MBTA to manage operations over these properties. But neither MassDOT nor MBTA will have the right to conduct common carrier freight operations over any of these railroad properties, nor will they have the right to admit any other party onto the properties for such purposes.<sup>49</sup>

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<sup>47</sup> 2009 Operating Agreement, Par. 5.

<sup>48</sup> See draft Exhibit I, South Coast Assets Deed, Exhibit D, thereto, Par. 1.

<sup>49</sup> 2009 Operating Agreement, Par. 2.1 (Joint Usage Rail Properties), Par. 3.1 (Freight Only Rail Properties); Definitive Agreement, Par. 5.1.1 (New Contracts); Term Sheet at 1-2.

Because neither MassDOT nor MBTA will hold itself out as a freight common carrier on the rail lines encompassed by the Notice, and because neither entity will possess the right or ability to provide such a service over these lines, MassDOT's acquisition of the Railroad Assets does not involve the transfer of a common carrier obligation that would trigger the Board's jurisdiction. See Central Puget Sound Regional Transit Authority – Acquisition Exemption – BNSF Railway Company, STB Finance Docket No. 34747 (STB served Nov. 18, 2005), slip op. at 2; Metro North Commuter Railroad Company – Acquisition and Operation Exemption – Line of Norfolk Southern Railway Company and Pennsylvania Lines LLC, Finance Docket No. 34293 (STB served May 13, 2003), slip op. at 2,3 (“Metro North”).

The proposed transaction is comparable to one previously reviewed by the Board and found not to require agency action – State of Georgia, Department of Transportation – Acquisition Exemption – South Carolina Central Railroad, Inc., STB Finance Docket No. 34057 (STB served Apr. 23, 2002) (“State of Georgia”). In that case, the Georgia Department of Transportation (“GDOT”) entered into an agreement with the South Carolina Central Railroad, Inc. (“SCCR”) to acquire from SCCR the physical assets (right-of-way and real property underlying the lines, together with the track and all improvements thereon) but not the right or obligation to conduct common carrier freight operations over 101.27 miles of rail line in Georgia. As part of that transaction, SCCR would reserve a permanent exclusive freight easement over the subject lines to provide common carrier service. SCCR's common carrier obligations, however, were to be

provided by a third party short line carrier – Georgia Southwestern Railroad, Inc. (“GWSR”) – pursuant to an existing lease with SCCR.<sup>50</sup>

CSXT and MBTA may assign their respective interests or obligations to another party – as CSXT intends to do by selling its permanent and exclusive freight easement on the South Coast Assets to Mass Coastal<sup>51</sup> – with 60 days written notice, provided that any assignment by MTBA “does not in any way impair or adversely affect the rights of CSXT hereunder or the rights of Amtrak under any agreement between Amtrak and CSXT or as required by law.”<sup>52</sup> In addition, CSXT’s potential future transfers of its retained permanent and exclusive freight easements to unrelated third parties are conditioned upon the transferee meeting certain prescribed “Transferee Standards” to be agreed upon by the parties and set forth at Exhibit I to the Definitive Agreement and in Exhibits E to each of the asset sale deeds.<sup>53</sup> Such measured restrictions on post-transaction transfers of retained common carrier permanent and exclusive freight easements are permitted under

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<sup>50</sup> The subject transaction is also comparable to the facts set forth in an even more recent transaction reviewed by the Board in 2008, wherein the parties invoked the State of Maine construct – the above-cited Port of Seattle. In that proceeding, the Board agreed that no agency action was necessary for BNSF Railway Company (“BNSF”) to convey certain rail line assets to the Port of Seattle subject to BNSF’s retention of a permanent, exclusive easement that BNSF intended, at the time of the asset sale, simultaneously to assign to an as-yet-undesignated third party railroad. See also State of Georgia Department of Transportation – Acquisition Exemption – Georgia Southwestern Railroad, Inc., STB Finance Docket No. 33876 (STB served Jul. 7, 2000) (a State of Maine-style transaction found not to be subject to the Board’s jurisdiction, wherein GDOT would acquire the rail property from the Georgia Southwestern Railroad, Inc. (“GSR”), subject to a retained freight service easement, which GSR had already conveyed to a third party short line – the Heart of Georgia Railroad, Inc.).

<sup>51</sup> MassDOT has, of course, already consented to CSXT’s proposed sale of its retained easement rights to Mass Coastal as part of the First Closing. Definitive Agreement, Par. 2.2.1; draft South Coast Assets Deed, Exhibit F, Exhibit E thereto, Par. 4.

<sup>52</sup> The agreements governing the subject transaction specifically recognize and preserve Amtrak’s rights to operate over the Boston Main Line pursuant to the Amtrak Agreement with CSXT. 2009 Operating Agreement, Section 18; draft BML-West Deed at 2.

<sup>53</sup> Definitive Agreement, Pars. 2.4.1 and 19.4.

the State of Maine construct,<sup>54</sup> particularly where, as here, the contractual provisions governing potential future transfers of the retained permanent and exclusive freight easement do not unreasonably interfere with CSXT's and Mass Coastal's respective abilities to fulfill their respective common carrier obligations on the Railroad Assets.

## **B. Operating Windows**

As indicated above, the 2009 Operating Agreement governing post-transaction BML-West operations provides for five types of daily operating windows as follows: (1) an A.M. Peak Window from 5:00 a.m. to 9:45 a.m. (the Priority Passenger Morning Rush Hour), during which time CSXT will be permitted to operate one scheduled freight train in one direction from Westborough (an intermediate point on the BML-West) to Worcester, with additional CSXT freight trains allowed on a non-priority basis; (2) a P.M. Peak Window from 4:00 p.m. to 10:00 p.m. (the Priority Passenger Evening Rush Hour), during which CSXT will be permitted to operate one scheduled freight train in one direction from Westborough to Worcester, with additional CSXT freight trains allowed on a non-priority basis; (3) a Midday Window from 9:46 a.m. to 3:59 p.m., allowing mixed passenger and freight use, with general dispatching priority conferred to passenger trains (subject to the protocols described in Paragraph 2.2(c) of the 2009 Operating Agreement); (4) a Late Night Window from 10:01 p.m. to 12:00 midnight, allowing for mixed passenger and freight use, with scheduled MBTA passenger trains operating in scheduled slots to have priority in either direction; and (5) a Midnight Window from 12:01 a.m. to 4:59 a.m., allowing for both freight and

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<sup>54</sup> "It is not uncommon for a public entity . . . that seeks to acquire the physical assets of a rail line to use or preserve for rail freight and commuter service [] to play a role in the subsequent assignment of the freight easement..." Port of Seattle at 4.

limited passenger use, with priority for freight use and provision for three scheduled MBTA passenger trains (each in one direction only).<sup>55</sup>

Under the 2009 Operating Agreement, CSXT will be permitted to operate freight trains over the BML-West lines during every operating window, although passenger rail operations clearly will be accorded priority (to a greater or lesser degree) during three of the five operating windows. In addition, while CSXT's freight usage rights will be very limited during the A.M. and P.M. Peak Windows, CSXT will not be barred completely from operating trains during any daily operating window, and it will enjoy priority treatment during the so-called Midnight Window. As set forth in the Verified Statement of Mr. Steven Potter, CSXT is confident that the operating window arrangement (which Mr. Potter negotiated for on behalf of CSXT) will permit CSXT to fully satisfy its common carrier freight obligations on the Boston Main Line.<sup>56</sup>

Preferential operating windows are commonplace on rail lines that host shared freight and passenger rail operations. Examples include Amtrak's Northeast Corridor Line, over which freight carriers including CSXT and Norfolk Southern Railway Company operate, and the MBTA-owned

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<sup>55</sup> 2009 Operating Agreement, Par. 2.2(b)-(c). Operations over the South Coast Assets will not at the outset be governed by prescribed operating windows, because those lines currently have freight operations only, and there is therefore no need at this time to balance passenger and freight service priorities as with the BML-West operations. MBTA does, however, plan to institute commuter rail service over the portions of the South Coast Assets by as soon as 2016. The Term Sheet and the MC Operating Agreement that MBTA and Mass Coastal will enter into, will account for the future institution of commuter rail service, and will balance, and adequately provide for, the needs of freight shippers and commuters.

The BPY Assets operations will remain essentially unchanged to preserve current operation status quo, and will be governed by the long-standing 1985 Agreement between CSXT and MBTA.

<sup>56</sup> See V.S. Potter at 4,5. Mr. Potter also testifies that the arrangements among MassDOT, MBTA, and CSXT would not unduly interfere with CSXT's provision of service on the Grand Junction Branch and the Boston Terminal Running Track (the so-called BPY Assets) (id. at 6). See also 4<sup>th</sup> Amendment to 1985 Agreement, which will revise Addendum 1 of the 1985 Agreement to reflect that the Boston Terminal Running Track and Grand Junction Branch will become MBTA Property jointly used with CSXT.

line between Framingham and CSXT's Beacon Park Yard, over which CSXT operates pursuant to the 1985 Agreement and related protocols that contain similar operating windows provisions. The Board has held consistently that protocols that provide for preferential operating windows favoring passenger trains during some time periods and freight trains during others are acceptable, and do not unduly restrict the provision of freight common carrier service, provided that the freight operating windows are adequate to satisfy the service needs of shippers. See MTA-II at 5, Washington County, OR – Acquisition Exemption – Certain Assets of Union Pacific Railroad Company, STB Finance Docket No. 34810 (STB served Apr. 11, 2007), slip op. at 3; New Mexico DOT at 2 (preferential operating windows can reflect an appropriate balancing of passenger and freight interests where the freight railroad is afforded adequate rights to be able to serve shippers and passenger service on the line can still be “provided in accordance with statutory and contractual standards”); Akron Metro at 4; NJT/Bordentown, 4 S.T.B. at 515. As indicated above, CSXT has carefully crafted the 2009 Operating Agreement with MBTA to preserve its interests in serving shippers on the BML-West, and it has, through Mr. Potter, expressed confidence that the subject arrangements will not undercut CSXT's ability not only to meet the needs of shippers on the line but also to fulfill its obligations to Amtrak.

MassDOT's proposed acquisition of the Railroad Assets has garnered substantial media attention in Massachusetts and in the railroad trade press. Nevertheless, CSXT is taking the added step of contacting all shippers on the Railroad Assets to ensure that they are adequately informed about the proposed transaction. To that end, a copy of the Notice and this Motion to Dismiss will be served on all shippers on the Railroad Assets lines. MassDOT will certify to the Board that such service has been completed when it receives appropriate notification from CSXT to that effect.



### **C. Maintenance**

With respect to BML-West maintenance (track and signal work), MBTA, which will assume the maintenance obligations for that line, has agreed to undertake such activities “in a manner that does not unreasonably interfere with train operations.”<sup>57</sup> MBTA has committed to maintain the main line tracks of the BML-West to:

standards to be set from time to time by the MBTA which in all instances shall be appropriate for both passenger and freight rail operations and which shall always meet or exceed the standard required by FRA rules and regulations for the agreed upon designated class of track, provided that in no event shall the rating of any bridge rebuilt by MBTA after the Effective Date be less than that existing as of the Effective Date.<sup>58</sup>

Furthermore, MBTA has committed to “use its best efforts to schedule Maintenance Services [on the BML-West] between the hours of 7 a.m. and 7 p.m., and in a manner that is fairly apportioned among the applicable windows of operation during that period.”<sup>59</sup> As a result of the transfer of title at the First Closing, MBTA will assume maintenance obligations for the BPY Assets pursuant to the applicable terms of the 1985 Agreement by assuming CSXT’s maintenance obligations under the relevant terms of that agreement. Similarly, upon the transfer of title at the Second Closing, MBTA will assume maintenance obligations for the BML-East (pursuant to the terms of the 1985 Agreement as amended) and the BML-West (pursuant to the 2009 Operating Agreement and the 1985 Operating Agreement as amended).

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<sup>57</sup> 2009 Operating Agreement, Par. 2.5(a)(1).

<sup>58</sup> 2009 Operating Agreement, Par. 2.5(a)(3).

<sup>59</sup> 2009 Operating Agreement, Section 2.5(a)(1). Again, because mixed rail passenger and freight operations will not take place on the South Coast Assets until approximately 2016, maintenance obligations on those lines will, in the mean time, remain with Mass Coastal.

CSXT's freight common carrier obligations on the BML-West, BML-East, and BPY Assets and Mass Coastal's obligations on the South Coast Assets do not transfer to MassDOT or to MBTA simply because MBTA has been designated to maintain, and ultimately will maintain, those rail lines. Maryland Transit Administration – Petition for Declaratory Order, STB Finance Docket No. 34975 (STB served Oct. 9, 2007), slip op. at 6 (“MTA-I”); Akron Metro at 3; Sacramento-Placerville Transportation Corridor Joint Powers Authority – Acquisition Exemption – Certain Assets of Southern Pacific Transportation Company, STB Finance Docket No. 33046 (STB served Oct. 28, 1996) slip op. at 2; see also Los Angeles County Transportation Commission – Petition for Exemption – Acquisition from Union Pacific Railroad Company, STB Finance Docket No. 34374 (STB served Jul. 23, 1996), slip op. at 3 (“LACTC/UP”) (special needs of passenger service operation give state agency added incentive to assume track maintenance).

#### **D. Dispatching**

The parties contemplate that dispatching on the South Coast Assets will become the responsibility of Mass Coastal upon the sale of CSXT's retained permanent and exclusive freight easement over those lines and the execution of the Operating Agreement between Mass Coastal and MBTA. As such, control over dispatching of the South Coast Assets should not undercut Mass Coastal's ability to provide freight service. As set forth in the attached Term Sheet, MBTA contemplates assuming maintenance and dispatching responsibilities over the South Coast Assets when MBTA commences material reconstruction of these lines. Under the terms of the 2009 Operating Agreement, MBTA will be responsible for dispatching of all of the trains operating over

the BML-West upon consummation of the Second Closing.<sup>60</sup> In addition, MBTA will assume dispatching responsibilities on the BML-East under the terms of the 1985 Agreement as amended. MBTA already has considerable experience dispatching commuter rail trains on other lines, including lines that currently host CSXT freight, Amtrak intercity passenger, and MBTA commuter trains. Commencing upon the First Closing, MBTA will assume responsibility for dispatching trains over the BPY Assets, consistent with the provisions of the 1985 Agreement as amended. Commencing upon the Second Closing, MBTA will assume responsibility for dispatching all trains over the BML-East as well as the BML-West.

MBTA's assumption of control of dispatching on the BML-West, the BML-East and the BPY Assets will not unreasonably impair CSXT's ability to fulfill its common carrier obligations on those lines, and it will not vest MassDOT with common carrier status.<sup>61</sup> In this case, the 2009 Operating Agreement establishes service priorities on the BML-West, and that agreement strikes an important balance between the line's multi-purpose function as a route for freight, intercity passenger, and commuter rail traffic. MBTA will operate the greatest number of trains on the BML-West, and so it is logical under MassDOT's ownership of this line that MBTA would assume day-to-day dispatching responsibilities. In any event, as the testimony of CSXT's Mr. Potter

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<sup>60</sup> 2009 Operating Agreement, Par. 2.4(a) ("MBTA retains the right to . . . performance of the management, regulatory and operational control of any and all rail service over MBTA Rail Properties (including Joint Usage Rail Properties) including, without limitation, dispatching . . .").

<sup>61</sup> See MTA-I at 6; New Mexico DOT at 2; Metro North at 2; LACTC/UP at 3 ("Dispatching control has less importance in its own right than it has as a means of enforcing the service priorities accorded under the operating agreement. If the operating agreement considered as a whole and the circumstances surrounding it are not likely to impair freight service, the passenger operator's control over dispatching will not by itself create such an obstacle, because the latter merely implements the former").

explains, CSXT will continue to be able to provide freight service to shippers located along, or that make use of, the BML-West and BML-East lines.<sup>62</sup>

Similarly, MBTA's future assumption of dispatching responsibilities for the South Coast Assets after the properties become joint use will not unreasonably impair Mass Coastal's ability to fulfill its common carrier obligation on that line, nor will it vest MassDOT with common carrier status.

#### **E. Spur Tracks and Improvements**

MassDOT and CSXT have agreed to exclude from the proposed asset sale certain tracks appurtenant to BML-West, including the yard lead tracks at Framingham Yard, Westborough Yard (including planned extensions of those tracks), and Worcester Yard. These tracks are essential to CSXT's provision of freight service over the BML-West, and MBTA will use these tracks only infrequently as necessary to maintain the BML-West main line. In exchange for MBTA's permission to use CSXT's freight only tracks on an infrequent basis, MBTA has agreed to use its best efforts to minimize any interference with CSXT's use of those tracks.<sup>63</sup> The 1985 Agreement (as amended) will contain similar provisions with respect to freight only tracks as they may exist on the BPY Assets and the BML-East line, and MassDOT anticipates that the MC Operating Agreement will, as appropriate, contain corresponding provisions.

Although the parties clearly contemplate that MBTA can and will make future improvements to the BML-West and BML-East main lines (including the installation and/or relocation of track), the 2009 Operating Agreement and the 1985 Agreement as amended contain important limitations on the appropriate scope of such improvements to ensure that CSXT's freight

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<sup>62</sup> See V.S. Potter at 6.

<sup>63</sup> 2009 Operating Agreement, Par. 3.2(a).

operations are not impaired.<sup>64</sup> The 2009 Operating Agreement also provides that CSXT may request MBTA to undertake future capital improvements to the BML-West to facilitate CSXT's freight operations (such as the installation of switches and siding tracks), which improvements may also benefit MBTA commuter rail and Amtrak intercity passenger service. The costs of such improvements will be allocated based on the extent to which MBTA may be benefited by the improvement, and CSXT shall bear the incremental costs associated with the operation and maintenance of such improvements.<sup>65</sup> The contractual rights and provisions discussed above reasonably protect CSXT's interest in providing rail freight service, and assure that MBTA will not have the ability to unduly restrict or impair CSXT's ability to fulfill its common carrier obligations on the BML-West or BML-East.

### **EXPEDITED CONSIDERATION**

MassDOT and CSXT have committed to a timetable for the consummation of the first stage of this transaction (the so-called First Closing), which will entail MassDOT's acquisition of the BPY Assets and South Coast Assets on or before May 14, 2010. Failure to complete the first phase of the subject transaction by that deadline could complicate execution of the transaction, including the Second Closing which involves the BML-West, and would be detrimental to the Commonwealth's transportation planning and funding initiatives, which are linked to the orderly

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<sup>64</sup> 2009 Operating Agreement, Pars.2.3(b)-(c) (obligating MBTA to maintain track clearance and load-carrying capabilities on the BML-West, and placing limitations on MBTA's conveyance, construction, or demolition of structures that would affect lateral and/or vertical clearances along certain specified portions of the BML-West). MassDOT anticipates that the MC Operating Agreement will contain similar provisions governing MBTA's planned South Coast Assets improvements. Accordingly, the analysis following, which focuses on the operations on the BML-West Assets should apply also to the operations on the South Coast Assets.

<sup>65</sup> 2009 Operating Agreement, Par. 4.1(a), (d).

acquisition of the Railroad Assets. To ensure that these deadlines are met, MassDOT respectfully requests expedited consideration, allowing a Board decision on this motion by no later than March 22, 2010. Specifically, MassDOT, with CSXT's concurrence, proposes that the following procedural schedule govern this proceeding:<sup>66</sup>

November 24, 2009	Notice of exemption and motion to dismiss filed
December 10, 2009	Notice published in <u>Federal Register</u> , along with request for comments on motion to dismiss (49 CFR 1150.32(b))
December 17, 2009	Stay petitions due (49 CFR 1150.32(c))
December 23, 2009	Decision on stay requests (if any)
December 24, 2009	Notice becomes effective
January 11, 2010	Discovery requests due (if any)
January 19, 2010	Responses to discovery due (if any)
January 25, 2010	Comments on motion to dismiss and petitions to revoke notice of exemption due
February 12, 2010	Replies to comments on motion to dismiss and to petitions to revoke notice of exemption due
March 25, 2010	STB final decision
May 14, 2010	Consummation of First Closing transaction

It is reasonable for the Board to expedite this matter and issue a decision that will permit the First Closing to occur no later than May 14, 2010. Such a decisional time frame is consistent with the Board's handling of similar State of Maine-style transactions, such as New Mexico DOT (two months), Utah Transit Authority – Acquisition Exemption – Union Pacific Railroad Company, STB Finance Docket No. 35008 (STB served Jul. 23, 2007) (three months); Central Puget Sound Regional Transit Authority – Acquisition Exemption – BNSF Railway Company, STB Finance Docket No. 34747 (STB served Nov. 18, 2005) (three months); Metro North (two months).

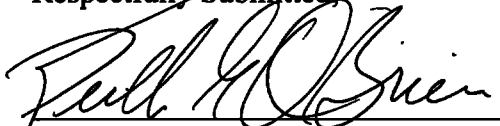
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<sup>66</sup> The proposed procedural schedule is designed to correspond to a procedural schedule that Mass Coastal and CSXT have proposed to govern the minor application proceeding docketed under STB Finance Docket No. 35314, pursuant to which Mass Coastal would obtain authority to acquire from CSXT the freight easement over the South Coast Assets.

## CONCLUSION

For the foregoing reasons, MassDOT respectfully requests that the Board dismiss MassDOT's concurrently-filed notice of exemption in this docket as not involving a transaction that is within the Board's jurisdiction, and that the Board so act in order to enable closing on this transaction by no later than May 14, 2010.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Keith G. O'Brien", is written over a horizontal line.

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Attorneys for Massachusetts  
Department of Transportation

DATED: November 24, 2009

## **COMPLIANCE WITH MASSACHUSETTS ENVIRONMENTAL POLICY**

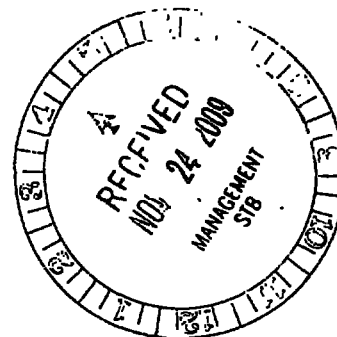
The Commonwealth of Massachusetts has established a strong policy of minimizing the environmental impacts associated with documents prepared by or on behalf of the Commonwealth. Specifically, the Commonwealth encourages greater use of recycled and environmentally preferable products to minimize waste and to promote further recycling. To the extent practicable in light of STB filing requirements, this Motion to Dismiss filing adheres to the Commonwealth's policies by using recycled paper with a minimum post-consumer content of 30%, recyclable and/or re-usable binding materials, and other products that contain recycled content.



**EXHIBIT A**

226065

Execution Copy



**DEFINITIVE AGREEMENT**

**BETWEEN**

**CSX TRANSPORTATION, INC.**

**and**

**THE COMMONWEALTH OF MASSACHUSETTS,  
acting by and through its Executive Office of Transportation and Public Works**

**Pertaining to the Purchase and Sale  
of the Boston Main Line, the Grand Junction Branch,  
the South Coast Lines, and the Boston Terminal Running Track**

**Dated as of**

**October 10, 2008**

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#### **List of Exhibits**

Exhibit A	The Railroad Lines
Exhibit A-1	Plans of Railroad Lines
Exhibit B	Beacon Park Yard Plan
Exhibit C	Deleted
Exhibit D	Non-Foreign Affidavit
Exhibit E	Certificate Designating Person Responsible for Paying Tax
Exhibit F	Clearance Work Agreement
Exhibit G	Additional MBTA Trains
Exhibit H	Environmental Conditions
Exhibit I	Transferee Standards

This **DEFINITIVE AGREEMENT** (this "Agreement"), dated as of October , 2008 is made and entered into by and between **CSX TRANSPORTATION, INC.**, a Virginia corporation, with an address at 500 Water Street, Jacksonville, Florida 32202, hereinafter called the "Seller," and **THE COMMONWEALTH OF MASSACHUSETTS**, acting by and through its **EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS**, an executive office of the Commonwealth of Massachusetts (the "Commonwealth"), with an address at Ten Park Plaza, Boston, Massachusetts 02116-3974, hereinafter called the "Buyer." Seller and Buyer may hereinafter sometimes be collectively referred to as the "Parties," or individually as a "Party." This Agreement is not effective upon execution, but will become effective (the "Effective Date") upon the conditions of and subject to Section 19.21 herein.)

### **RECITALS**

The Parties agree on the following statement of facts upon which the agreements set forth herein are based:

WHEREAS, Seller is a class 1 freight railroad with a substantial presence in Massachusetts, specifically, and New England, generally;

WHEREAS, pursuant to Mass. Gen. L. c. 161C, § 3, Buyer is charged with, among other tasks, developing, promoting, preserving and improving an adequate, safe, efficient, and convenient rail system for the movement of passengers and freight in the Commonwealth;

WHEREAS, Seller has certain interests in land, track, ballast and other infrastructure within certain railroad rights of way in the Commonwealth known and commonly referred to as the Boston Main Line, the Grand Junction Branch, the South Coast Lines, and the Boston Terminal Running Track, all as more particularly described on Exhibits A and A-1 hereto;

WHEREAS, Buyer has determined that the acquisition by Buyer of certain assets of Seller and the assumption by Buyer or, at Buyer's election, the Massachusetts Bay Transportation Authority (the "MBTA"), of certain obligations of Seller is in the Commonwealth's interest and is in furtherance of Buyer's statutory mandate and responsibilities;

WHEREAS, Buyer claims to be vested with the power to condemn real and personal property including, without limitation, certain assets of Seller, by eminent domain pursuant to Mass. Gen. L. c. 161C, § 6(d);

WHEREAS, Buyer claims to be imminently considering taking certain assets of Seller by eminent domain;

WHEREAS, in lieu of attempting to exercise its power of eminent domain in order to acquire certain assets from Seller adversarially, Buyer has entered into discussions with Seller to acquire such assets, and to assume certain liabilities of Seller by agreement, and Seller has agreed to sell certain assets to Buyer and to permit Buyer to assume certain liabilities of Seller, all in accordance with the terms of this Agreement; and

WHEREAS, the Parties desire that Seller retain and reserve, and not transfer to Buyer, a perpetual easement over a portion of the properties acquired by Buyer for the purposes of providing

rail freight service on an exclusive basis and, in certain circumstances, for permitting continued intercity rail passenger service by Amtrak on the Boston Main Line, it being the intention of the Parties that Seller remain, and Buyer not become a common carrier subject to the Interstate Commerce Act, as revised, the Railway Labor Act, as revised, or any other federal law relating to the provision of railroad transportation on such properties, except to the extent that Buyer seeks to become a common carrier consistent with Seller's rights and obligations hereunder.

NOW, THEREFORE, in consideration for the agreements and mutual undertakings and covenants made in this Agreement, Seller and Buyer hereby agree as follows:

### **AGREEMENT**

#### **1. PURCHASE AND SALE OF THE TRANSFERRED ASSETS**

1.1 **Purchase and Sale.** In lieu of Buyer's exercising its power to acquire certain of Seller's assets by eminent domain, and on the terms and subject to the conditions set forth herein, at the Closing as set forth in Section 2, Seller agrees to sell, transfer, convey, assign and deliver, and Buyer hereby agrees to purchase and accept from Seller, the following, all of which, taken together, beginning at Section 1.1.1 below, comprise the Railroad Assets (the "Railroad Assets"). Not included in the Railroad Assets are Seller's reserved, retained, perpetual, easement to provide rail freight service and for such other rights over the Railroad Lines as may be mutually agreed to pursuant to Section 8.3.2 (the "CSXT Easement"), which CSXT Easement shall (i) incorporate by reference the Operating Agreement, as hereinafter defined; (ii) provide that Seller has the exclusive right to provide freight rail service and for such other rights as may be mutually agreed upon as set forth above over such easement area (iii) recognize Buyer's right to operate the Additional Trains as more specifically described in and subject to, and with the benefit of, Section 5.1.3 herein and (iv) include, subject to the provisions of Section 1.3 following, the rights of the National Railroad Passenger Corporation ("Amtrak") to continue to operate on the Boston Main Line, pursuant to an Agreement between Seller and Amtrak (the "Amtrak Agreement"), dated June 1, 1999, and all supplements thereto, or to any subsequent agreement between the MBTA and Amtrak which complies with the provisions of Section 1.3.2 hereof and which may supersede the Amtrak Agreement, or as required by law. The Parties agree that the CSXT Easement shall burden only the fee and easement interests being conveyed by Seller to Buyer hereunder; provided, however, that this limitation shall not restrict or adversely affect the exercise by Seller of any rights that Seller may have independent of the conveyance and reservation being made by Seller hereunder. The parties understand and agree that Seller has the right to operate freight service on the Railroad Lines by virtue of existing trackage rights, operating agreements or other existing similar rights (collectively, "Other Operating Rights"). Said Other Operating Rights are excluded from the definition of Railroad Assets. The definition of Other Operating Rights will be subject to mutual agreement of the Parties during the due diligence period pursuant to Section 8.3.2. The Parties acknowledge that Seller's exclusive right to provide freight service within the CSXT Easement does not preclude Buyer or Buyer's assignees from using all of the Railroad Lines, as hereinafter defined, for their own freight needs (the Buyer's and its assignee's own freight needs being the transport of railroad materials, equipment, ballast, rails, and the like owned by Buyer or its assignee, but not common or contract carriage of freight), provided such use by Buyer does not interfere with Seller's use of the CSXT Easement:



1.1.1 Seller's right, title and interest in the fee simple interests, easements, rights of access and all of Seller's right, title and interest in and to rights-of-way known generally as the Boston Main Line (Boston to Worcester); the Grand Junction Branch; the South Coast Lines, including an easement in the New Bedford Yard; and the Boston Terminal Running Track, but excluding all such right, title, interest, easement or right of access on or over any real property and interests therein the fee title to which is owned as of the Effective Date by the President and Fellows of Harvard College or Harvard University Beacon Yards, LLC, (each, individually, a "Railroad Line," and, collectively, the "Railroad Lines"). All of the interests to be conveyed by Seller to Buyer hereunder are generally described in Exhibit A, and are shown specifically in a set of plans (the "Railroad Line Plans") to be developed as Exhibit A-1 pursuant to Section 8.3.2 herein. Seller reserves the right to relocate portions of the Railroad Lines in connection with the relocations set forth in Section 2.3 hereof; provided, however, that in the event that any such relocation will have a material adverse effect on Buyer's use of the Railroad Line which is affected by such relocation, Buyer shall have the right to treat such relocation as a failure of condition pursuant to Section 2.8 herein. The Railroad Line Plans shall also include a description of real property (the "Excluded Real Property") to be excluded from the Railroad Lines;

1.1.2 all of Seller's right, title and interest in and to the tracks, rails, ties, switches, ballast, crossings, bridges, trestles, culverts, buildings, structures, facilities, crossing protection devices, communication lines, poles and radio masts and signals (the "Included Fixtures") which are affixed or located on or in, as of the Closing Date, the right-of-way described in the Railroad Line Plans, provided, however, that Seller shall not, after the Effective Date, cause a material change in the Included Fixtures sufficient to interfere with Buyer's ability to provide commuter passenger service on the Railroad Lines as provided for in the Operating Agreement (said fee simple interests, easements and rights-of-way together with Railroad Lines and the Included Fixtures are sometimes referred to hereinafter as the "Subject Property"), but excepting any items of the kind described above which are located on the Excluded Real Property, all of which are hereby reserved by Seller and are excepted from the sale, transfer and conveyance to Buyer contemplated by this Agreement;

1.1.3 all of Seller's right, title and interest in and to the items of personal property, supplies and other materials primarily used in, or primarily relating to, the operation of the Railroad Lines, including those needed to properly operate and maintain the signal systems and grade crossing systems (the "Included Tangible Personal Property") listed or described in a schedule (the "Included Tangible Personal Property Schedule") to be mutually agreed upon by the Parties, but excluding the following items of personal property that are or may be located on or in the Subject Property on the Closing Date: railroad rolling stock, locomotives, automobiles, trucks, automotive

equipment, machinery, office and computer equipment, radios and radio control equipment, furniture, tools, inventories, materials and supplies, as well as any other personal property which is not to be sold, transferred and conveyed to Buyer hereunder and which is not affixed to the Subject Property on the Closing Date, except as any such property may be specifically listed or described in the Included Tangible Personal Property Schedule (the "Excluded Tangible Personal Property") listed in a schedule (the "Excluded Tangible Personal Property Schedule") to be mutually agreed upon between the Parties. Any personal property located on the Subject Property on the Closing Date not listed in the Included Tangible Personal Property Schedule shall be deemed to be included in the Excluded Tangible Personal Property Schedule (the Included Fixtures and the Included Tangible Personal Property are sometimes referred to hereinafter collectively as the "Railroad Equipment");

1.1.4 to the extent assignable, all permits, licenses, certificates of occupancy, approvals, consents, variances and other authorizations that are used or necessary in connection with, the ownership or operation or other use of any of the Railroad Assets relating primarily to or necessary for the operation of the Railroad Assets (but excluding those necessary for the operation by Seller of the rail freight operations over the CSXT Easement) as conducted on the date hereof (all such permits and the like, the "Permits") as set forth in a schedule (the "Assigned Permits Schedule") to be mutually agreed upon by the Parties;

1.1.5 all real property interests of Seller described in the Railroad Line Plans including, without limitation, benefits which are appurtenant to the Railroad Lines, together with all improvements, structures and fixtures thereon, and all easements, leases, privileges, rights-of-way, the interest of Seller in all land underlying any adjacent public streets or roads which streets and roads exist by reason of an easement over Seller's land, appurtenances, occupancy agreements, and other rights belonging to Seller and which Seller has the ability to convey, pertaining to, or accruing to the benefit of, the Subject Property; subject, however, to (a) those rights, interests, contracts, agreements, leases, occupancy agreements, easements and other rights which are listed, described in, or a part of the Excluded Real Property described in the Railroad Line Plans; and (b) the CSXT Easement, as set forth in the Deed(s) (defined below), excepting and excluding the Excluded Real Property; and

1.1.6 all of Seller's rights, benefits, obligations and liabilities arising under or connected with the contracts, agreements, leases, licenses, occupancy agreements, and easements (the "Intangibles") to be transferred to Buyer (the "Included Intangibles") listed or described in a schedule (the "Included Intangibles Schedule") to be mutually agreed upon by the Parties but excluding any contract, agreement, lease, license, occupancy agreement or easement which expires or terminates in accordance with the terms thereof on or prior to the Closing Date (the "Excluded Intangibles") listed or described

in a schedule (the "Excluded Intangibles Schedule") to be mutually agreed upon by the Parties. Seller is also reserving to itself the Intangibles (the "Retained Intangibles") listed in a schedule (the "Seller's Retained Intangibles Schedule") to be mutually agreed upon by the Parties.

1.2 Identity of Seller. Seller represents that title to certain of the Railroad Assets to be conveyed and transferred to Buyer in accordance with this Agreement may be standing in the name of one or more subsidiary organizations or affiliates of Seller. Seller shall cause each such organization to convey the Railroad Assets to Buyer and Seller hereby guarantees that the conveyance by such organizations shall be in accordance with the terms of this Agreement. Seller shall provide Buyer with such information and documents from such organizations as would have been required under this Agreement if Seller were the owner of the particular Railroad Asset actually owned by such organization. Notwithstanding the foregoing, neither Consolidated Rail Corporation, nor its parent nor any subsidiary thereof shall be considered an affiliate of Seller.

1.3 Amtrak Agreement.

1.3.1 Notwithstanding any provision of this Agreement to the contrary, from and after any Closing that would affect Amtrak's operation on Railroad Assets that have been conveyed to Buyer, it is understood by the Parties hereto that, with respect to Railroad Assets under its management, direction and control, Buyer shall (or cause MBTA to) recognize and accommodate Seller's obligations to accommodate Amtrak's rights under the Amtrak Agreement and as provided by law and to furnish (or cause MBTA to furnish) Seller adequate facilities, including, without limitation, tracks and bridges, for Seller's performance of its obligations to Amtrak under the Amtrak Agreement or as provided by law, in at least substantially the same condition and in substantially the same manner as provided prior to the Effective Date hereof.

1.3.2 Notwithstanding the provisions of Sections 1.1 and 2.4.6 hereof, in the event that Buyer (or the MBTA) enters into a separate agreement with Amtrak after the Second Closing pursuant to which Buyer or the MBTA provides to Amtrak substantially the same service as Seller is now providing to Amtrak under the Amtrak Agreement in connection with the Railroad Assets, the Parties agree that the CSXT Easement shall provide that, in such event, Seller shall no longer have any rights or obligations (except may be required by law) to use the CSXT Easement to provide any services to Amtrak. Buyer, in its sole discretion, reserves the right to negotiate, or to allow the MBTA to negotiate, an agreement with Amtrak for all purposes for which Amtrak is authorized to operate in connection with the Railroad Assets; provided, however, that such agreement shall: (i) comply with all applicable laws; (ii) not alter, amend or modify the liability or indemnity obligations of Amtrak and CSXT towards one another under the Amtrak Agreement, (iii) not cause Seller to be in violation of Seller's obligations under the Amtrak Agreement as it applies to the Railroad Assets and (iv) be subject to the CSXT Easement and CSXT's rights under the Operating Agreement, including,

without limitation, the windows of operation, maintenance and access. In the event Buyer (or the MBTA) does not reach agreement with Amtrak in connection with the Railroad Assets and Amtrak continues to operate under the CSXT Easement, CSXT shall forward any revenue earned after the Second Closing under the Amtrak Agreement (determined in accordance with generally accepted accounting principles) to Buyer promptly after each payment period.

## **2. CLOSING**

**2.1 The Closing.** The Closing shall occur in two separate stages referred to hereinafter as the “First Closing” and the “Second Closing” (the First Closing and the Second Closing are sometimes hereinafter each referred to interchangeably as the “Closing”). So much of the Railroad Assets as constitute the Grand Junction Branch, the South Coast Line and the Boston Terminal Running Track are hereinafter referred to as the “First Closing Assets” and shall be transferred at the First Closing. So much of the Railroad Assets as constitute the Boston Main Line are hereinafter referred to as the “Second Closing Assets” and shall be transferred at the Second Closing. Whenever the word “Closing” is used herein it shall refer to the Closing at which the Railroad Assets for that particular Closing are to be delivered and all references to the Parties’ respective rights and obligations shall be with respect to that particular Closing. The Closing shall take place at the offices of a nationally recognized title insurance company (the “Title Company”) with an office in Boston, Massachusetts, mutually acceptable to both Buyer and Seller, as an escrow agent (“Escrow Agent”). The Parties agree that the Closing shall be conducted through the Title Company as an Escrow Agent. Upon satisfaction or completion of all closing conditions and deliveries, the Parties shall direct the Escrow Agent to immediately record and deliver the closing documents to the appropriate Parties and make disbursements according to the closing statements executed by Buyer and Seller.

**2.2 The First Closing.** The First Closing shall occur at a time and on a date to be mutually agreed upon by the Parties (the “First Closing Date”). The Parties agree that such date shall be as soon as is reasonably practicable after the STB Decision, as defined in Section 10.1 hereof. Subject to the satisfaction of all of the conditions and contingencies herein contained, the Parties shall use commercially reasonable efforts to schedule the First Closing on or before June 15, 2009; provided, however, that neither Party shall be in default hereunder solely as a result of its failure to agree to the First Closing by such date. If the First Closing does not occur by June 15, 2009, either Party may elect to terminate this Agreement by written notice to the other Party, in which event: (i) except as provided in Section 3.3, all Deposits made hereunder by the Buyer shall be returned promptly, (ii) except as otherwise provided herein, all other rights and obligations of the Parties hereto shall cease and, (iii) this Agreement shall be void and without recourse to the Parties hereto. Notwithstanding the foregoing, both Parties’ obligation to perform the Clearance Work, as provided in and subject to Section 4., and Buyer’s right to run the Additional Trains as provided in and subject to Section 5.1.3, shall continue in full force and effect notwithstanding any termination of this Agreement for any reason.

**2.3 The Second Closing.** The Second Closing shall occur on a date (the “Second Closing Date”) which is thirty (30) days after the latest to occur of (a) the Intermodal Operations Relocation, as defined in Section 2.3.1, (b) the Solid Waste Operations Relocation, as

defined in Section 2.3.1 (or, as described in Section 2.3.3, Seller's acquiring the full benefit of the EOT Easement), (c) the Bulk Transfer Operations Relocation, as defined in Section 2.3.1 (or, as described in Section 2.3.3, Seller's acquiring the full benefit of the EOT Easement), (d) the consummation of the First Closing, (e) the completion of the Buyer's Clearance Work as defined in Section 4.1 and (f) the completion of the Seller's Clearance Work as defined in Section 4.2. In the event that the Second Closing does not occur by September 15, 2012, either Party may terminate this Agreement by written notice to the other Party, in which event (i) subject to Section 3.3, all Deposits then being held by the Seller, if any, shall be returned promptly, (ii) except as hereinafter provided, all obligations of the Parties hereto shall cease and (iii) this Agreement shall be void and without recourse to the Parties hereto. Notwithstanding the foregoing, both Parties' obligation to perform the Clearance Work, as provided in and subject to Section 4, and Buyer's right to run the Additional Trains as provided in and subject to Section 5.1.3, shall continue in full force and effect notwithstanding any termination of this Agreement for any reason and (ii) in no event shall applicable rights and obligations under the Turnover Plan or the Operating Agreement be terminated unless specifically set forth therein. (The First Closing Date and the Second Closing Date are sometimes hereinafter each referred to interchangeably as the "Closing Date"). Whenever the words "Closing Date" are used herein they shall refer to the Closing Date at which the Railroad Assets to be transferred at that Closing and all references to the Parties respective rights and obligations shall be with respect to that particular Closing Date.

2.3.1 Affiliates of Seller currently conduct, in part, the businesses of (a) loading and unloading containerized commodities from freight cars, storing such containers and delivering, or arranging for the pick-up and delivery of, such containers to third party customers (collectively, the "Intermodal Operations"), (b) collecting, storing and transferring containerized solid waste on behalf of cities and towns located in the Commonwealth of Massachusetts (collectively, the "Solid Waste Operations"), and (c) unloading bulk commodities from railcars and transferring said commodities to trucks (the "Bulk Transfer Operations"). The Intermodal Operations, Solid Waste Operations and Bulk Transfer Operations are currently conducted at the Beacon Park Yard, sometimes also known as the Allston Landing South, which is shown more particularly as Parcels B and C on Exhibit B attached hereto (the "Beacon Park Yard"). In connection with the transfers herein described, Seller has agreed to use commercially reasonable efforts to cause the Intermodal Operations, the Solid Waste Operations and the Bulk Transfer Operations to be relocated to other locations (respectively, the "Intermodal Operations Relocation," the "Solid Waste Operations Relocation" and the "Bulk Transfer Operations Relocation" and collectively the "CSX Beacon Park Yard Relocation"). Seller agrees to give Buyer written notice not less than ten (10) days after the completion of each of the Intermodal Operations Relocation, the Solid Waste Operations Relocation and the Bulk Transfer Operations Relocation. The Parties acknowledge that Seller or its affiliates conduct other operations at Beacon Park Yard, the relocation of which are not matters addressed in this Agreement.

2.3.2 Seller agrees to use commercially reasonable efforts to complete the CSX Beacon Park Yard Relocation as soon as is reasonably practical, but does not guarantee that the Intermodal Operations Relocation will occur. If the Intermodal Operation Relocation is not complete by December 31, 2011 (the "Intermodal Relocation Date") either Party may terminate this Agreement by written notice to the other Party in which event (i) subject to Section 3.3, the Deposit shall be returned promptly, (ii) except as hereinafter provided, all obligations of the Parties hereto shall cease without recourse to the Parties and (iii) this Agreement shall be void and without recourse to the Parties hereto. Notwithstanding the foregoing, both Parties' obligation to perform the Clearance Work, as provided in and subject to Section 4, and Buyer's right to run the Additional Trains as provided in and subject to Section 5.1.3, shall continue in full force and effect notwithstanding any termination of this Agreement for any reason.

2.3.3 If the Solid Waste Operations Relocation and the Bulk Transfer Operations Relocation have not been completed by the earlier to occur of (a) the date Seller completes the Intermodal Operations Relocation, or (b) the Intermodal Relocation Date, the Second Closing shall be subject to, and conditioned upon, Seller's acquiring full benefit of the BOT Easement as defined in Section 10.2.

2.3.4 Buyer agrees to use its reasonable efforts, consistent with its statutory and constitutional obligations, to assist Seller and/or Seller's affiliates in obtaining all permits and approvals from all federal, state, municipal or local governmental bodies, agencies, authorities, departments, commissions, boards and instrumentalities ("Governmental Authorities") to complete the CSX Beacon Park Yard Relocation; provided, however, Seller's failure to obtain such permits shall not constitute a default by Buyer hereunder. Buyer and Seller agree that Buyer is executing this Agreement, in part, in full satisfaction of any claim that Seller may have to relocation assistance or benefits under state or federal law.

2.4 Form of Conveyance. Seller shall convey the Subject Property to Buyer by release deed (the "Deed," which may consist of one or more individual Deeds as Buyer and Seller may reasonably determine) in substantially the form as mutually agreed to by the Parties, which Deed shall include the retained, reserved CSXT Easement, and the title to the Subject Property shall be free from encumbrances except:

- (a) The CSXT Easement;
- (b) Building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations, all as existing as of the Closing Date;

- (c) Taxes, tax liens and assessments, both general and special, which are not yet due and payable but which may become due or payable on the Subject Property on or after the Closing Date;
- (d) Reservations or exceptions whether or not of record, including, without limitation, reservations or exceptions of minerals or mineral rights by third parties; public utility and other easements; and easements, crossings, occupancies and rights-of-way, howsoever created, existing as of the Closing Date;
- (e) Encroachments or any other state of facts existing as of the Closing Date which might be revealed from an accurate survey, title search or personal inspection of the Subject Property;
- (f) The rights of others in existing roads, streets, ways, alleys and party walls;
- (g) Mortgage liens with banks or other institutional real estate lenders pertaining to the Subject Property created by Seller, for which Seller will obtain payoff statements prior to or at the Closing and for which a portion of the Purchase Price shall be placed in escrow with the Escrow Agent for the payment thereof, which liens Seller shall cause to be released, at no cost or expense to Buyer, within ten (10) days of the recording date of the Deed; and
- (e) The rights of the Bay Colony Railroad in the North Dartmouth Industrial Track (also known as the Watuppa Branch).

At the Closing, Seller shall also execute one or more Bills of Sale (each, individually, a "Bill of Sale") conveying to Buyer or to Buyer's nominee, the Included Fixtures and the Included Tangible Personal Property, all in a manner consistent with, and subject to, the provisions of this Agreement.

2.4.1 The Parties shall mutually agree upon the form of the Deed and the form of the Bill of Sale. The Deed shall describe the Subject Property, not by means of a metes and bounds description, but by means of map references to plans and surveys which were previously recorded in the Registry of Deeds in which the Deed is to be recorded, and Seller's valuation plans as modified by the agreement of the Parties as described in, and shown on Exhibits A and A-1, respectively, which plans and surveys are, consistent with customary conveyancing practice and Massachusetts law, reasonably adequate to accurately describe the Subject Property. In addition, the Deed shall include the CSXT Easement, which shall be an easement in gross the benefit of which runs to Seller personally and not to any particular parcel of land. The CSXT Easement shall, by its terms, be assignable in whole or in part. Except as hereinafter set forth with respect to transfers to a Related Party, neither Seller, a Related Party, as hereinafter defined, nor any subsequent holder of the benefit of the CSXT Easement (each of Seller, a Related Party and a

subsequent holder being a "Benefitted Holder"), shall sell, lease, license or otherwise transfer (each such transaction being a "Transfer") the benefit of the CSXT Easement, in whole or in part, or any interest therein (any such interest being an "Easement Interest") to a third party who fails to meet the Transferee Standards to be agreed upon by the Parties and set forth on Exhibit I pursuant to Section 8.3.2. The Transferee Standards shall not apply to transactions contemplated in Section 2.4.6, even if post Closing regulatory approval of the transaction has not yet been secured. Notwithstanding the foregoing to the contrary, no Benefitted Holder shall be required to obtain Buyer's consent for a Transfer of an Easement Interest to a Related Party of the Benefitted Holder which is making the Transfer, and such Related Party shall be deemed to have met the Transferee Standards (a "Related Party Transfer"). Seller, a Related Party or the Benefitted Holder, as the case may be, shall deliver to Buyer written notice of every proposed Transfer of an Easement Interest not less than sixty (60) days prior to the effective date of the Transfer of the Easement Interest. Within such sixty (60) day period, if the Transfer is not to a Related Party, Buyer shall either (i) consent to such transfer, such consent not to be unreasonably withheld, conditioned or delayed and which must be given if the proposed transferee meets the Transferee Standards, or (ii) state in detail the reasons for denial of consent or why Buyer contends that the proposed transferee does not meet the Transferee Standards, as the case may be. The preceding notification provision shall apply to each Transfer by Seller, a Related Party and by each Benefitted Holder; provided, however, that Buyer shall not have any right to approve a transfer to a Related Party, and shall not apply to any transfer of Other Operating Rights.

2.4.1.1 (a) If at any time Seller, or a party which is a Related Party of Seller (a "Seller Related Party"), makes a Transfer of an Easement Interest to a third party, Seller, or a Seller Related Party, shall promptly pay to Buyer a transfer fee of five (5%) percent of the consideration (the "Easement Transfer Payment") paid for such transfer, net of any portion of the consideration attributable to any machinery or equipment included in the transfer. No party to whom Seller, or a Seller Related Party, makes an Transfer of an Easement Interest shall be required to make an Easement Transfer Payment with regard to a subsequent Transfer of the same Easement Interest or any part of said Easement Interest. In no event shall Seller or a Seller Related Party be responsible for paying an Easement Transfer Payment to Buyer for transactions which are (a) the sale of Other Operating Rights, or (b) in the ordinary course of Seller's or the Seller Related Party's business as a freight rail service provider, including without limitation, freight revenue and other income from freight service. Except with respect to the subsequent Transfer of an Easement Interest for which an Easement Transfer Payment has previously been paid, the Easement Transfer Payment shall apply to each Transfer of an Easement Interest (other than a Related Party Transfer) by Seller or a Seller Related Party.



(b) No Benefitted Holder shall be required to make an Easement Transfer Payment in connection with any Transfer of an Easement Interest, in whole or in part, to any person, firm, partnership, corporation or other entity now or hereafter affiliated with such Benefitted Holder or in connection with a merger, reorganization, or sale of all or substantially all of such Benefitted Holder's assets (collectively, a "Related Party"); provided, however, that a Seller Related Party shall take such transfer or assignment subject to the aforesaid provisions pertaining to Buyer's right to collect an Easement Transfer Payment to the extent applicable at the time of such transfer or assignment.

(c) The provisions of this Section 2.4.1 shall survive the delivery of the Deeds hereunder.

2.4.2 Buyer shall cause the Deed (which shall include therein the CSXT Easement) to be recorded in the public records of the counties in which the Subject Property lies within thirty (30) days subsequent to the Closing Date. In the event that the description of the Subject Property contained in the Deed and/or CSXT Easement is deemed inadequate for recordation purposes by the Registers of Deeds, Seller, at its own cost and expense, and as promptly as is reasonably practicable, shall make such changes and revisions as may be required by said Registers such that the Deed will be accepted by the Registers for recording. In the event that, after Closing, a metes and bounds description of the Subject Property is desired by Buyer and furnished to Seller by Buyer, at Buyer's sole cost and expense, then Seller shall execute and deliver such further deeds and/or further easements or confirmatory or corrective deeds and/or confirmatory or corrective easements, containing a description of the Subject Property based on such metes and bounds description as may be acceptable to Buyer, Seller and to the Register(s) of Deeds so involved. In the event that the preparation of such further or confirmatory deeds and/or easements requires any survey of the Subject Property, or any portion thereof, or any search or examination of title with respect to the Subject Property, or any portion thereof, Buyer shall pay any and all costs and expenses arising out of or connected with such survey, search or examination.

2.4.3 In the event that any subdivision approval is necessary for the completion of the sale, transfer and conveyance contemplated by this Agreement, said approval shall be obtained by Seller, at its sole risk, cost and expense, including, without limitation, any and all fees, costs and expenses arising out of or connected with the obtaining of subdivision plans, the filing of same with governmental body(ies), recordation thereof and legal fees.

2.4.4 At the Closing, Seller shall assign to Buyer all of Seller's rights and interests and Buyer shall assume all of Seller's obligations and liabilities arising under or connected with the Intangibles listed in the Included Intangibles Schedule. Notwithstanding the foregoing, nothing contained in

this Agreement shall impose upon Seller an obligation to assign to Buyer the Excluded Intangibles or any Intangible that expires by its terms prior to a Closing. Any expiration or termination of an Excluded Intangible shall not be construed as a breach of this Agreement and shall not constitute grounds for termination or rescission of this Agreement.

2.4.5 In the event that Seller is unable, for any reason(s), including, without limitation, its inability or failure to obtain any necessary consent after having used commercially reasonable efforts to do so, to effect, on the Closing Date, the assignment of any contract or agreement as contemplated by this Agreement, then such failure or inability shall not constitute grounds for termination or rescission of this Agreement. Seller represents that the Intangibles contained in the Included Intangible Schedule and the Permits contained in the Assigned Permits Schedule include, to the best of Seller's knowledge, all such instruments that are in existence. For purposes of this subsection 2.4.5, Seller's knowledge shall be limited to the actual knowledge of D. Kevin Hurley, Director of Real Estate Services for CSX Real Property, Inc. and such other persons as the parties may mutually agree without undue investigation and inquiry. In the event that any omission becomes known to Seller or Buyer, then the party discovering such omission shall provide notice thereof to the other party. In such event, Seller shall assign any such instrument to Buyer that would otherwise have been assigned to Buyer under this Agreement, and such instrument shall be subject to all of the applicable terms of this Agreement.

2.4.6 Buyer shall accept and purchase the Railroad Assets subject to: (a) the matters set forth in Section 2.4 (as applicable), and subject to, and together with the benefit of (b) the Operating Agreement and the rights, interests, contracts, agreements, leases, occupancy agreements and easement(s) listed or described in the Included Intangibles Schedule and the Permits. Nothing contained in this Section 2.4.6 shall be construed to: (i) limit or restrict any exception, reservation, right or privilege of Seller under this Agreement; (ii) limit or restrict Seller's right, prior to a Closing, to enter into any contract, agreement, lease or license pertaining to the provision by Seller or another railroad of rail freight service on the Railroad Lines that have not been conveyed, notwithstanding any necessary post Closing regulatory approval, subject to the terms and conditions of the Existing Agreements. The term "Existing Agreements", as used herein shall mean collectively (a) that certain agreement dated September 19, 1994 between MBTA and CONRAIL regarding the rail line from Mile Post 22.4+/- at Framingham, Massachusetts to Mile Post 45+/- at Worcester, Massachusetts (the "Worcester Extension"), and (b) that certain Trackage Rights Agreement between the MBTA and CONRAIL dated November 20, 1986 but effective as of July 1, 1985 (the "1985 Trackage Rights Agreement"); (iii) require Seller to cancel, terminate or amend any Intangible listed or described in the Included Intangibles Schedule; or (iv) impose any obligation on Seller with respect to

Labor Protection, any Labor Challenge or Environmental Matters (all of which are defined below) other than as set forth in this Agreement.

2.4.7 The conveyance or retention of an Intangible shall carry with it the right to renew, modify, alter, amend and terminate the same, provided the Included Intangibles shall not be renewed, modified, altered, or amended in such a way as would interfere with the rights of Seller under the CSXT Easement and provided, further, that Seller shall not renew, modify, alter, or amend Seller's Intangibles in such a way as to interfere with Buyer's reasonable utilization of the Subject Property for its intended use as a commuter and passenger rail system.

2.4.8 All amounts due under or received by Seller relating to the Seller's Intangibles prior to the Closing Date shall remain the property of Seller and shall not be subject to proration or adjustment of any sort. From and after the Closing, Buyer shall be entitled to receive after the Closing Date all amounts due from any third party for the use of Seller's Intangibles; provided, however, in the event that such amount is received by Seller on account of Seller's continued ownership of other railroad lines, Seller shall pay to Buyer quarterly prorated amounts received by Seller on a per mile proration (that is, if a payment relates to 200 miles of rail corridor, and 43 miles of said rail corridor is contained within the Subject Property, Seller shall deliver to Buyer on a quarterly basis 43/200 of amounts received by Seller relating to the Seller's Intangibles for any period due after the Closing Date). It is understood by the Parties that the Seller's Intangibles, *inter alia*, may grant or confer to others, not party to this Agreement, including, without limitation, Amtrak, rights, interests and privileges in or pertaining to the Subject Property, and that, from and after the Closing, Buyer shall not cause or suffer any interference with the enjoyment and use of the rights, interests and privileges granted or conferred in the Seller's Intangibles, and Buyer shall not cause or suffer any breach of the Seller's Intangibles.

## 2.5 Deliveries at Closing.

2.5.1 Deliveries by Seller. As of, or prior to, the Closing Date, Seller shall deliver to the Escrow Agent the items described in clauses (i) through (xvii) below; provided, however, that the Railroad Equipment shall not be delivered to Buyer until such time as it assumes the responsibility for dispatching, operating and maintaining the Railroad Line to which the Railroad Equipment relates pursuant to the Operating Agreement (defined below):

- (i) the Deed for the Subject Property subject to the matters described in Section 2.4, except that the Deed shall not except mortgage liens;
- (ii) one or more Bills of Sale in the form to be mutually agreed upon by the Parties, with respect to the Railroad Equipment subject to the

exceptions, reservations, rights, and privileges of Seller set forth in this Agreement;

(iii) an Assignment of the Included Intangibles and Permits, in the form to be mutually agreed upon by the Parties;

(iv) on the First Closing Date only, the Turnover Plan (the "Turnover Plan"), in a form to be mutually agreed upon by the Parties;

(v) on the First Closing Date only, an operating agreement (the "Operating Agreement") in a form to be mutually agreed upon by the Parties without restriction on the part of either Party with respect to the contents of the Operating Agreement and the resolution of liability;

(vi) the information and documents comprising the Railroad Assets set forth in Section 1 of this Agreement;

(vii) a certificate duly executed by Seller to the effect that all representations and warranties of Seller set forth in this Agreement remain true and correct in all material respects as of the Closing Date;

(viii) a certificate executed on behalf of Seller by the secretary or assistant secretary or other appropriate officer or manager, dated as of the Closing Date, certifying and attaching: a good standing certificate for Seller issued by the Secretary of State for the Commonwealth of Virginia dated within three (3) business days of the Closing; a Good Standing Certificate for a Foreign Corporation for Seller issued by the Secretary of State for the Commonwealth of Massachusetts; and a certified copy of authorizing resolutions of Seller's board of directors or manager(s), as applicable, associated with the approval of the transactions contemplated in this Agreement;

(ix) an affidavit of non-foreign status that complies with Section 1445 of the Code in the form attached hereto as Exhibit D;

(x) a general assignment (the "General Assignment of Warranties") in form and substance reasonably acceptable to Buyer, of all warranties and guaranties the benefit of which Seller is entitled to, if any, and only to the extent assignable, without consent or expense, with respect to the Railroad Assets, including, without limitation, any from any contractors, subcontractors, suppliers or materialmen in connection with any construction, repair or alteration of the Railroad Assets;

(xi) affidavits (without indemnification) sufficient for a title insurance company, if Buyer elects to obtain title insurance, to delete any exceptions for mechanics' or materialmen's liens from an owner's title insurance policy and which identify, to Seller's knowledge, all parties in possession of the Subject Property. For purposes of this subsection 2.5.1,

Seller's knowledge shall be limited to the actual knowledge of D. Kevin Hurley, Director of Real Estate Services for CSX Real Property, Inc. and such other persons as the parties may mutually agree;

(xii) an original closing statement setting forth the Purchase Price and the closing adjustments and prorations (the "Closing Statement") in form to be mutually agreed upon by the Parties;

(xiii) a Designation of Person Responsible for Tax Reporting under Internal Revenue Code Section 6045 in the form of Exhibit E annexed hereto designating Seller's attorney as the party responsible for making the returns required under Internal Revenue Code Section 6045;

(xiv) a disclosure statement submitted in compliance with the requirements of Mass. Gen. L. c. 7, s. 40J;

(xv) payoff statements for all mortgages, liens and encumbrances which Seller is obligated to satisfy in order to convey title to the Railroad Assets to Buyer hereunder;

(xvi) on the First Closing Date, an environmental release from the MBTA in a form to be mutually agreed upon between Seller and the MBTA (the "MBTA Environmental Release"); and

(xvii) a letter from in-house counsel to Seller stating that the individual signing this Agreement on behalf of Seller has been duly authorized to do so.

**2.5.2 Deliveries by Buyer.** As of or prior to the Closing Date, Buyer shall deliver to the Escrow Agent the items described in clauses (i) through (vii) below:

(i) on the First Closing Date, the First Closing Purchase Price, and on the Second Closing Date, the Second Closing Purchase Price, both to be adjusted as herein provided;

(ii) on the First Closing Date only, the Turnover Plan;

(iii) on the First Closing Date only, the Operating Agreement;

(iv) the Closing Statement;

(v) a certificate duly executed by Buyer to the effect that all representations and warranties of Seller set forth in this Agreement remain true and correct in all material respects as of the Closing Date;

(vi) the MBTA Environmental Release; and

(vii) letters from in-house counsel to Buyer and from in-house counsel to the MBTA stating that the individuals signing this Agreement on behalf of Buyer and the MBTA, respectively, have been duly authorized to do so.

2.6 Boston Main Line Deed. The Parties agree that the Deed (which shall include therein the CSXT Easement) conveying the title to the Boston Main Line will be delivered by Seller to the Escrow Agent at the First Closing; provided, however, that the Escrow Agent shall thereafter hold such Deed in escrow and shall not release such Deed from escrow except in connection with the Second Closing or termination of this Agreement.

2.7 Delivery of Railroad Assets. At the Closing, Seller shall deliver the Railroad Assets free of all tenants and occupants, except as provided in this Agreement.

2.8 Conditions Precedent to Obligations of Buyer. The obligations of Buyer under this Agreement to consummate the transactions contemplated hereby at the Closing shall be subject to the satisfaction, at or prior to the Closing, of all of the following conditions, any one or more of which may be waived in writing, at the option of Buyer:

2.8.1 The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if made on and as of such date.

2.8.2 All of the terms, covenants and conditions to be complied with and performed by Seller on or prior to the Closing Date shall have been complied with or performed in all material respects.

2.8.3 There shall have occurred no change in applicable law between the Effective Date and the Closing Date that would materially adversely affect the ability of Buyer to provide commuter rail service on the Railroad Lines.

2.8.4 There shall have occurred no changes in title or encroachments from and after the Effective Date that would have a material adverse effect on Buyer's ability to provide commuter rail service on the Railroad Lines.

2.8.5 There shall have occurred no change in applicable statutory or regulatory law (but not including decisional law) between the Effective Date and the Closing Date which affects the liability arrangement (i) as between the Parties (and the MBTA) under the Operating Agreement, which liability arrangement the Parties (and the MBTA) agree is subject to their mutual consent, or (ii) under the Existing Agreements.

2.9 Conditions Precedent to Obligations of Seller. The obligations of Seller under this Agreement to consummate the transactions contemplated hereby to be consummated at the Closing shall be subject to the satisfaction, at or prior to the Closing, of all the following conditions, any one or more of which may be waived in writing, at the option of Seller:

2.9.1 The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if made on and as of such date.

2.9.2 All of the terms, covenants and conditions to be complied with and performed by Buyer on or prior to the Closing Date shall have been complied with or performed in all material respects.

2.9.3 There shall have occurred no change in applicable statutory or regulatory law (but not including decisional law) between the Effective Date and the Closing Date which affects the liability arrangement (i) as between the Parties and the MBTA under the Operating Agreement, which liability arrangement the Parties (and the MBTA) agree is subject to their mutual consent, or (ii) under the Existing Agreements.

### **3. PURCHASE PRICE**

3.1 Purchase Price. The Purchase Price ("Purchase Price") payable hereunder shall consist of a monetary payment, to be payable as hereinafter provided.

3.2 Cash Payment. The total Purchase Price for the Railroad Assets is ONE HUNDRED MILLION and 00/100 DOLLARS (\$100,000,000.00) which shall be payable by Buyer as set forth in Section 3.5:

3.3 Deposit. Buyer has, prior to, or simultaneously with, the execution of this Agreement by Seller, delivered TEN MILLION and 00/100 DOLLARS (\$10,000,000.00) (the "Deposit") to Seller which shall hold the Deposit. At the First Closing, the Deposit shall be applied as part of the First Closing Purchase Price. Once the Deposit has been applied to the First Closing Purchase Price, references in this Definitive Agreement to the return of the Deposit shall be disregarded. In the event of termination of this Agreement prior to the First Closing, if (i) Buyer's Clearance Work has not been completed in accordance with Section 4, and (ii) the First Stage Trains (as defined in Section 5.1.3) are continuing to run, then the Deposit shall not be returned to Buyer until either (x) Buyer's Clearance Work is completed, or (y) within six (6) months of the date of notice of termination, the First Stage Trains have ceased to run. If this Agreement is terminated (other than for Buyer default) prior to the First Closing but conditions (x) and (y) are satisfied, Seller shall return the Deposit to Buyer.

3.4 Interest. All interest earned on the Deposit shall be paid to, or applied on account of, the Party entitled to the Deposit or portion of the Deposit, as applicable, in accordance with this Agreement.

3.5 Payment of the Purchase Price. The Closing shall take place in two stages, the First Closing and the Second Closing, as more particularly described in Section 2 hereof. At the First Closing, the portion of the Purchase Price payable by Buyer to Seller shall be FIFTY MILLION and 00/100 DOLLARS (\$50,000,000.00) (the "First Closing Purchase Price") and at the Second Closing the portion of the Purchase Price payable by Buyer to Seller shall be FIFTY MILLION and 00/100 DOLLARS (\$50,000,000.00) (the "Second Closing Purchase Price").

Both the First Closing Purchase Price and the Second Closing Purchase Price shall be subject to the prorations and adjustments provided for herein.

3.5.1 The First Closing Purchase Price shall be allocated among the Railroad Assets as follows:

(i) \$27,500,000.00 to so much of the Railroad Assets as constitute the Grand Junction Branch;

(ii) \$21,000,000.00 to so much of the Railroad Assets as constitute the South Coast Lines; and

(iii) \$1,500,000.00 to so much of the Railroad Assets as constitute the Boston Terminal Running Track.

3.5.2 The Deposit shall be applied to the First Closing Purchase Price as follows:

(i) \$5,500,000.00 to so much of the Railroad Assets as constitute the Grand Junction Branch;

(ii) \$4,200,000.00 to so much of the Railroad Assets as constitute the South Coast Lines; and

(iii) \$300,000.00 to so much of the Railroad Assets as constitute the Boston Terminal Running Track.

3.5.3 The balance of the First Closing Purchase Price shall be payable by Buyer and shall be applied as follows:

(i) \$22,000,000.00 to so much of the Railroad Assets as constitute the Grand Junction Branch;

(ii) \$16,800,000.00 to so much of the Railroad Assets as constitute the South Coast Lines; and

(iii) \$1,200,000.00 to so much of the Railroad Assets as constitute the Boston Terminal Running Track.

3.5.4 At the First Closing, the Seller shall apply so much of the interest as has accrued on the Deposit up to the First Closing Date to the First Closing Purchase Price, on a prorata basis, in the same percentages as the Deposit is allocated in subsection 3.5.2 above.

3.5.5 Buyer shall deliver the Second Closing Purchase Price to Seller on the Second Closing Date.



3.5.6 The Purchase Price shall be payable in lawful currency of the United States in immediately available funds by certified check or by wire transfer to an account designated by Seller not less than three (3) days before the First Closing and the Second Closing, as the case may be.

**3.6 Proration.**

3.6.1 At both the First Closing and the Second Closing, all of the items normally prorated, including those listed below, relating to the ownership and operation of the Railroad Assets shall be prorated as of the Closing Date, with Seller liable to the extent such items relate to any time period prior to the Closing Date, and Buyer liable to the extent such items relate to periods from and after the Closing Date:

(i) personal property, real estate, occupancy, sewerage and water taxes, assessments and other charges, if any, on or with respect to the Railroad Assets;

(ii) any permit, license, registration, compliance assurance fees, emission fees or other fees, in each case, with respect to any Permit associated with the Railroad Assets; and

(iii) rent or any other payments due from and after the Closing under any of the Included Intangibles.

3.6.2 In connection with the prorations referred to in (a) above, in the event that actual figures are not available at the Closing Date, the proration shall be measured by calendar days and be based upon the actual amount paid for the preceding year (or appropriate period) for which amounts are available and such proration of taxes or fees shall be recalculated and appropriate adjustments shall be paid upon request of either Seller or Buyer, made within sixty (60) days of the date that the actual amounts become available. Seller and Buyer shall furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustments and proration calculations made pursuant to this Section 3.6.

3.7 Taxes and Permits. Buyer represents that it is exempt from the payment of sales and/or use taxes and all documentary tax stamps and transfer taxes in connection with the conveyance of the Railroad Assets and agrees that in no event shall Seller be required to pay any such charges.

3.8 Labor Protection. Seller shall be responsible for Labor Protection costs, if any, occasioned by the transactions contemplated in this Agreement. As used herein, "Labor Protection" shall mean the costs, if any, incurred by Seller as a result of the sale of the Railroad Assets, which costs may be incurred pursuant to the provision of a collective bargaining agreement bargained by Seller as a result of the sale of the Railroad Assets or pursuant to rule, decision or final order of any governmental agency having jurisdiction over the event. Except as provided in the immediately preceding sentence, the Parties agree that each shall be solely responsible for its

risks and costs associated with any challenge to the transactions brought pursuant to law, a collective bargaining agreement or otherwise ("Labor Challenge").

#### **4. CLEARANCE WORK**

4.1 Buyer's Clearance Work. In addition to any other obligations hereunder, including without limitation, the obligation to deliver the Purchase Price in accordance with the terms of this Agreement, and in consideration of the mutual agreements of the Parties set forth herein, Buyer agrees to pay for, cause to be performed and completed, on or before August 31, 2012, or such later date as the Parties may agree, certain work involving, among other things, the raising of certain bridges along the Boston Main Line between the New York/Massachusetts state line and the railroad's Boston Main Line intersection with I-495 which are identified in Exhibit F hereto (the "Clearance Work Agreement"), which bridges, other than MHD Bridge #P-10-10 (Woodlawn, Avenue, Pittsfield, MA), are owned by Buyer as of the Effective Date. Buyer shall not, after the Effective Date, by act or omission, cause or allow to be caused any change in Buyer's ownership of any one particular bridge until after the Buyer's Clearance Work (defined below) for that particular bridge has been completed (collectively, "Buyer's Clearance Work"). The scope, timing, estimated cost of, and respective responsibility for, such Buyer's Clearance Work, is set forth in the Clearance Work Agreement. Buyer agrees to begin the design and construction of the Clearance Work immediately following the Effective Date. The Clearance Work Agreement is being signed contemporaneously with this Agreement.

4.2 Seller's Clearance Work. In addition to any other obligations hereunder, including without limitation, the obligation to deliver the Deed in accordance with the terms of this Agreement, and in consideration of the mutual agreements of the Parties set forth herein, Seller agrees to pay for, cause to be performed and completed, on or before August 31, 2012, or on such later date as the Parties may agree, certain work involving, among other things, the lowering of certain track located along the Boston Maine Line between the New York/Massachusetts state line and the railroad's Boston Main Line intersection with I-495 (collectively, "Seller's Clearance Work"), the scope, timing, estimated cost of, and responsibility for, such Seller's Clearance Work, to be as set forth in the Clearance Work Agreement. Seller agrees to begin the design and construction of the Clearance Work immediately following the Effective Date.

#### **4.3 Obligation to Perform.**

4.3.1 Each Party agrees to complete the Clearance Work for which it is responsible in a good and workmanlike manner using materials of a commercially reasonable quality. In the event that a Party (the "Non-Performing Party") fails to complete a specific element of its Clearance Work in the manner and by the time provided for in the Clearance Work Agreement, the other Party (the "Performing Party") may send a written notice (a "Default Notice") to the Non-Performing Party which notice shall describe in reasonable detail the Non-Performing Party's failure to complete the specific element of its Clearance Work. In the event that the Non-Performing Party fails to remedy its default within fourteen (14) days after the Performing Party has sent a Default Notice, the Performing Party may, at its

election, suspend performance of the Clearance Work for which it is responsible until such time as the Non-Performing Party cures its default.

4.3.2 If the Non-Performing Party fails to cure its default within sixty (60) days after the Performing Party's having sent a Default Notice or, in the case where such default is not reasonably susceptible to cure within such sixty (60) day period, the Non-Performing Party does not begin such cure within such sixty (60) day period and, thereafter, diligently prosecute such cure to completion, the Performing Party may pursue such remedies as are provided in Section 12 below.

4.3.3 Notwithstanding the foregoing, both Parties' obligation to perform the Clearance Work, as provided in and subject to Section 4., and Buyer's right to run the Additional Trains as provided in and subject to Section 5.1.3, shall continue in full force and effect notwithstanding any termination of this Agreement for any reason.

4.3.4 The provisions of this Section 4 shall survive Closing and the delivery of the Deed hereunder.

4.3.5 The Parties acknowledge that MHD Bridge 3P-10-10 (the "Pittsfield Bridge") is currently owned by a private party. Buyer agrees to use reasonable efforts to cause said private party (or subsequent owner, private or public) to raise (not demolish, as referenced in Schedule B to Exhibit F hereto) the Pittsfield Bridge as provided for in the Clearance Work Agreement (the "Pittsfield Bridge Work"). If, after having used such reasonable efforts, the private party (or such subsequent owner) refuses to perform the Pittsfield Bridge Work, then Buyer shall use reasonable efforts to: (i) identify a funding source other than Seller or the MBTA to pay for the Pittsfield Bridge Work and (ii) Buyer shall cause the Pittsfield Bridge Work to be done. In the absence of such funding source, the Parties agree to allocate the cost of the Pittsfield Bridge Work as follows: If the Intermodal Operations are relocated to a location west of Bridge No. W-24-7, then Bridge No. W-24-7 shall be removed from the Buyer's Clearance Work and Buyer shall pay for the cost of the Pittsfield Bridge Work. If said Bridge W-24-7 remains a part of Buyer's Clearance Work, then Seller shall reimburse Buyer, or at Buyer's option, shall reimburse the entity performing the Pittsfield Bridge Work, for fifty percent (50%) of the cost of the Pittsfield Bridge Work. The Pittsfield Bridge Work shall be deemed part of Buyer's Clearance Work, and Buyer's Clearance Work shall not be deemed complete unless the Pittsfield Bridge Work is completed.

## 5. ONGOING OPERATIONS

### 5.1 Continuing Obligations.

5.1.1 New Contracts. From the Effective Date through Closing, Seller will not enter into any contract that will be an obligation affecting the Railroad Assets subsequent to the applicable Closing Date, except (i) contracts relating to Seller's operation of the Railroad Assets consistent with the terms of the Existing Agreements that will not prejudice or interfere with the consummation of the transfers contemplated hereunder, will not impose any financial obligation on Buyer, and will not interfere with Buyer's use of the Railroad Assets, subject, however, to the CSXT Easement, (ii) contracts entered into in the ordinary course of business that are terminable without cause and without the payment of any termination penalty on not more than thirty (30) days prior notice, or (iii) the granting of Intangibles in the ordinary course of Seller's business; provided, however, that the granting of an Intangible shall not materially interfere with Buyer's or, at Buyer's option, Buyer's assignee's, ability to provide commuter passenger service on a Railroad Line;

5.1.2 Maintenance of Improvements. From the Effective Date through Closing Seller shall maintain all Railroad Assets substantially in their present condition (ordinary use and wear excepted) and in compliance with all applicable and Federal Railroad Administration rules and regulations and in accordance with any legal, contractual or regulatory obligations existing during such period;

5.1.3 Additional Trains. Seller hereby agrees that Buyer, or at Buyer's option, the MBTA, shall immediately after the execution of this Agreement by both Parties, have the right to operate two and one-half (2.5) additional round-trip trains (for a total of five (5) additional MBTA trains) in accordance with Exhibit G hereto (the "First Stage Trains"). If this Agreement terminates before a Closing Date for any reason, Buyer may continue to run the First Stage Trains, subject to performance by Buyer of Buyer's Clearance Work, as described below, and to Section 12.3. Not later than ten (10) days following the earlier to occur of (i) Seller's acceptance of possession, or (ii) Seller's commencing use, of a locomotive turning and servicing facility located in Central Massachusetts to be made available to Seller by Buyer, at no cost to Seller, on an exclusive basis (or if not exclusive, subject to terms and conditions reasonably acceptable to Buyer, provided in any event that such non-exclusive use shall (a) be at no cost to Seller, (b) not adversely affect Seller's capacity, present and future, for freight service, and (c) provide for priority to Seller's movements) (hereinafter the "Locomotive Facility") at a time, in accordance with plans, including servicing capacity for present and future use, and at a location, mutually agreed upon Buyer and Seller, Buyer, or at Buyer's option, the MBTA, shall have the right to operate not less than one (1) additional round trip train (for a total of two (2)

additional MBTA trains) in accordance with the amendment to Exhibit G to be developed pursuant to Section 8.3.2 (the "Second Stage Trains"). In the event that this Agreement is terminated for any reason, but Buyer completes Buyer's Clearance Work, Buyer, or at Buyer's option, the MBTA, shall have the right to operate a minimum of one (1) additional round-trip train (for a total of two (2) additional MBTA trains) and a maximum of two (2) round-trip trains (for a total of four (4) additional MBTA trains) (the "Third Stage Trains"), depending on the capacity of the Railroad Line as determined by mutual agreement. Seller shall take commercially reasonable steps to create capacity to accommodate the Third Stage Trains. Parties shall meet periodically to review performance of existing trains, present and future demand for freight and passenger trains, potential technological and infrastructure improvements, progress on relocation and clearance efforts, and other topics that may affect capacity for the Third Stage Trains. After such consultation with Buyer, Seller will determine whether capacity exists to operate the Third Stage Trains. However, in the event that Seller determines that capacity does not exist to make the minimum Third Stage Trains available within thirty (30) days of the completion of Buyer's Clearance Work, Seller shall pay to Buyer the sums identified in Section 5.1.4. So many of the First Stage Trains, the Second Stage Trains and the Third Stage Trains which Buyer is entitled to run at any time hereunder are referred to in this Agreement as the "Additional Trains." If Buyer fails to complete or otherwise make available to Seller the Locomotive Facility as provided for herein, then Buyer shall have no right to run the Second Stage Trains. If Buyer fails to complete Buyer's Clearance Work as provided herein, then Buyer; subject to the provisions of Section 12.3 hereof, shall have no right to run the Third Stage Trains and Buyer shall cease operating the First Stage Trains. The Parties acknowledge Seller's right to run trains on the Boston Main Line between Framingham and Worcester shall only be constrained by this Agreement and the Existing Agreements prior to and in the event that the Second Closing does not occur. Once the Second Closing is complete, Buyer shall have the right to use, or to cause the MBTA to use, the Boston Maine Line between Framingham and Worcester subject only, as between Buyer and Seller, to the terms of the CSXT Easement and the Operating Agreement then in effect. Prior to the Second Closing, the Additional Trains shall run at the times and in the manner provided for in Exhibit G hereto, or as may be amended with respect to the Third Stage trains, in accordance with the terms of the Existing Agreements but subject to the provisions of Section 5.2 below. Subject to the foregoing, in the event that this Agreement terminates prior to a Closing Date for any reason, the Parties shall continue to dispatch and operate the Additional Trains in accordance with the Existing Agreements. Notwithstanding anything herein or in the Existing Agreements to the contrary, the respective term of each Existing Agreement shall, as of the Effective Date of this Agreement, be deemed to be "evergreen" and the provisions thereof, including without limitation the liability provisions contained therein, shall continue in full force and effect with respect to all

existing and Additional Trains until the earliest of (i) the Second Closing, if it occurs, (ii) such time as Buyer, Seller and MBTA agree to alter, modify, amend or replace one or both of the Existing Agreements, or (iii) June 30, 2015. The immediately preceding sentence shall survive any termination of this Agreement.

5.1.4 Payment in Lieu of Minimum Third Stage Trains. If, in accordance with the provisions of Section 5.1.6 below, after having used commercially reasonable efforts to provide the Third Stage Trains, Seller determines, after consultation with Buyer, that the capacity does not exist to make the Third Stage Trains available to Buyer within thirty (30) days after Buyer completes Buyer's Clearance Work, then Seller shall pay to Buyer fifteen (15%) percent of the aggregate out-of-pocket cost and expenses incurred by Buyer to complete Buyer's Clearance Work.

5.1.5 The CSXT Easement. The provisions of Sections 5.1.3 and 5.1.4 shall be incorporated into the CSXT Easement.

5.1.6 Future Capacity. This Agreement is not intended to constrain the Parties from considering, over time and prior to the occurrence of the Second Closing and the relocation that precedes the same, the effect of future technological, infrastructure, commercial and other changes that may allow the possibility of accommodating additional freight and passenger needs, to be shared on a commercially reasonable basis, on the Boston Main Line, subject to the mutual agreement of the Parties. The Parties acknowledge and recognize that achieving the Second Closing, preceded by fulfillment of all conditions thereto, will create additional capacity.

5.2 Operating Agreement. The Parties agree that the use of the Railroad Assets as they are acquired by Buyer shall be governed thereafter by the Operating Agreement.

5.3 MBTA Role. The MBTA joins in this Agreement for the purpose of benefitting, enforcing and being bound by Section 5.1.3, 5.1.4, 5.1.5 and 5.2.

## 6. CASUALTY

6.1 Damage. If, prior to the Closing, the Railroad Lines, or any portion thereof, are damaged by fire or other casualty, Seller shall estimate the cost to repair and the time required to complete repairs and will provide Buyer with written notice of Seller's estimation (the "Casualty Notice") as soon as reasonably practical after the occurrence of the casualty.

6.1.1 Material. In the event of any Material Damage to, or destruction of, the Railroad Lines or any portion thereof prior to Closing, either Seller or Buyer may, at its option, terminate this Agreement by delivering written notice to the other on or before the expiration of thirty (30) days after the date Seller delivers the Casualty Notice to Buyer (and if necessary, the Closing Date shall be extended to give the Parties the full thirty-day period to make such election and to obtain insurance settlement

agreements with Seller's insurers). Upon any such termination: (i) except as provided in Section 3.3 hereof, the Deposit shall be returned to Buyer; (ii) except as otherwise specifically provided herein, the Parties hereto shall have no further rights or obligations hereunder; and (iii) this Agreement shall be void and without recourse to the Parties hereto. Notwithstanding the foregoing, both Parties' obligation to perform the Clearance Work, as provided in and subject to Section 4, and Buyer's right to run the Additional Trains as provided in and subject to Section 5.1.3, shall continue in full force and effect notwithstanding any termination of this Agreement for any reason. If neither Seller nor Buyer so terminates this Agreement within said thirty (30) day period, then the Parties shall proceed under this Agreement and close on schedule (subject to extension of Closing as provided above) and, as of the Closing, Seller shall assign to Buyer, without representation or warranty by, or recourse against, Seller, all of Seller's rights in and to any resulting insurance proceeds due Seller as a result of such damage or destruction and Buyer shall assume full responsibility for all needed repairs. Buyer shall receive a credit at Closing for any deductible amount under such insurance policies (but the amount of the deductible plus insurance proceeds shall not exceed the lesser of (A) the cost of repair or (B) the Purchase Price. For the purposes of this Agreement, "Material Damage" and "Materially Damaged" means damage which, in Buyer's reasonable estimation, exceeds \$200,000.00 to repair or which, in Buyer's reasonable estimation, will take longer than ninety (90) days to repair.

6.1.2 Not Material. If the Railroad Lines are not Materially Damaged, then neither Buyer nor Seller shall have the right to terminate this Agreement, and Seller shall, at its option, either (i) repair the damage before the Closing in a manner reasonably satisfactory to Buyer, or (ii) credit Buyer at Closing for the reasonable cost to complete the repair (in which case Seller shall retain all insurance proceeds and Buyer shall assume full responsibility for all needed repairs).

## **7. TITLE DUE DILIGENCE**

7.1 Title Examination. In connection with Buyer's execution of this Agreement, Buyer may elect to cause to be performed a title examination for each of the Railroad Lines (one or more of such title examinations are hereinafter referred to collectively as the "Title Examination") at Buyer's expense. Buyer shall, upon Seller's request, make available to Seller all Title Examination materials, provided Buyer makes no representation or warranty as to the completeness or accuracy thereof. Seller shall, as soon as is reasonably practical, provide to Buyer (but makes no representation or warranty as to the completeness or accuracy of) (i) copies of applicable Valuation Maps for the Railroad Lines, (ii) all title information in its possession pertaining to each parcel in the Subject Property, and (iii) copies of all leases and occupancy agreements in its possession related to the Railroad Lines. Seller shall also provide in electronic format, scanned versions of each instrument retrievable by CSXT. Seller shall not deliver any information to Buyer pursuant to this section that, to Seller's knowledge, is not accurate in any material respect. For purposes of this subsection 7.1, Seller's knowledge shall be limited to the

actual knowledge of D. Kevin Hurley, Director of Real Estate Services for CSX Real Property, Inc. and such other persons as the parties may mutually agree.

**7.2 Name of Buyer.** Title to the Railroad Lines shall be conveyed to THE COMMONWEALTH OF MASSACHUSETTS, acting by and through the Executive Office of Transportation and Public Works, unless Buyer designates a nominee or nominees to take title to all or a part of the Railroad Assets, in which case the grantee shall be said nominee or assignee, as the case may be. Any such assignee or nominee must join in this Agreement and be fully bound thereby.

**7.3 Additional Provisions Pertaining to Utility Rights.** Seller, as of the Effective Date, may have entered into one or more general agreements with a utility company or companies for a utility crossing or crossings over or under the Railroad Lines. Any such general agreement may require Seller to reserve a permanent easement for the benefit of the utility company over or under a particular section of a Railroad Line. If Seller determines that the Railroad Lines have already been encumbered by existing utilities which were constructed pursuant to such general agreements, or Seller has a currently enforceable legal obligation as reasonably determined by Seller to create such an easement or easements, Seller shall provide Buyer with copies of all written agreements with utility companies for such easements in its possession as soon as is reasonably practical, but in any event prior to the Closing. Buyer shall have the right to terminate this Agreement within fifteen (15) days of Seller's providing such copies to Buyer if Buyer is not satisfied with the utility easements granted, or to be granted, by Seller, whereupon except as provided in Section 3.3, the Deposit shall be returned forthwith, and except as otherwise provided herein, all obligations of the Parties hereto shall cease and this Agreement shall be void and without recourse to the Parties. Notwithstanding the foregoing, both Parties' obligation to perform the Clearance Work, as provided in and subject to Section 4, and Buyer's right to run the Additional Trains as provided in and subject to Section 5.1.3, shall continue in full force and effect notwithstanding any termination of this Agreement for any reason.

## **8. OTHER DUE DILIGENCE; BUYER'S CONTINGENCIES**

**8.1 Due Diligence Materials To Be Delivered.** Seller shall deliver to Buyer the following (the "Property Information") from time to time after the Effective Date in each case as soon as is reasonably practical:

**8.1.1 Environmental and Hazardous Material Reports.** Seller shall provide such access and environmental due diligence material related to the Railroad Lines as the Parties may agree pursuant to the terms of Section 18 of this Agreement concerning environmental due diligence ("Environmental Matters");

**8.1.2 Tax Statements.** Copies of real estate tax bills and personal property bills relating to the Subject Property, if applicable, for the current tax period;

**8.1.3 Railroad Records.** Copies of track charts; Valuation Maps in Seller's possession for the Railroad Lines;



8.1.4 Intangibles. Copies of all Intangibles identified in the Included Intangible Schedule, affecting the Subject Property;

8.1.5 Cooperation. The Parties shall cooperate in providing such information as may be required by federal governmental authorities to approve the transfer of the Railroad Lines.

8.1.6 Confidentiality. The information described in Sections 8.1.1, 8.1.4, and 8.1.5 above shall be furnished solely to Buyer's counsel pursuant to a mutually satisfactory confidentiality agreement.

8.2 Access Agreement. Buyer's right to access the Railroad Lines shall be subject to the Right of Entry Agreement executed by the Parties contemporaneously herewith (the "Right of Entry Agreement"). The Right of Entry Agreement is incorporated herein in full, and all due diligence on the Subject Property performed by Buyer shall be governed by the terms and conditions set forth in the Right of Entry Agreement.

8.3 Due Diligence/Termination Rights.

8.3.1 Buyer shall have the right to examine, inspect, and investigate the title to the Subject Property, the Property Information and the Railroad Lines and, in Buyer's sole and absolute judgment and discretion, to determine whether the Railroad Assets are acceptable to Buyer in Buyer's sole discretion. In the event that the Railroad Assets are not acceptable to Buyer for any reason or for no reason, Buyer may terminate this Agreement by giving written notice of termination to Seller on or before May 15, 2009, (the "Due Diligence Contingency Date"). In the event that Buyer terminates this Agreement pursuant to this Section: (i) subject to Section 3.3, the Deposit shall be returned forthwith, (ii) except as otherwise provided herein, all obligations of the Parties shall cease; and (iii) this Agreement shall be void and without recourse to the Parties hereto. Notwithstanding the foregoing, both Parties' obligation to perform the Clearance Work, as provided in and subject to Section 4 and Buyer's right to run the Additional Trains as provided in and subject to Section 5.1.3, shall continue in full force and effect notwithstanding any termination of this Agreement for any reason.

8.3.2 Either Party may elect to terminate this Agreement by giving written notice to the other Party on or before the Due Diligence Contingency Date if, after having used commercially reasonable efforts to do so, they have been unable to agree upon the resolution of liability allocation, including without limitation, the form and content of the Operating Agreement, as well as the form and content of the Included Tangible Personal Property Schedule, the Excluded Tangible Personal Property Schedule, the Assigned Permits Schedule, the Exceptions to Real Property Interests Schedule, the definition of Other Operating Rights, the Included Intangibles Schedule, the Seller's Retained Intangibles Schedule, the Deed, the Railroad Line Plans, the CSXT Easement, the Bill of Sale, an Assignment of Included Intangibles and

Permits, the Turnover Plan, the General Assignment of Warranties, the MBTA Environmental Release, the amendment to Exhibit G with respect to the schedule for the Second Stage Trains, and any Exhibit hereto which is not completed as of the signing of this Agreement, including without limitation Exhibits H and I. In the event that either Party terminates this Agreement pursuant to this subsection, (i) subject to Section 3.3, the Deposit shall be returned forthwith, (ii) except as otherwise provided herein, all obligations of the Parties shall cease and (iii) this Agreement shall be void and without recourse to the Parties hereto. Notwithstanding the foregoing, both Parties' obligation to perform the Clearance Work, as provided in and subject to Section 4 and Buyer's right to run the Additional Trains as provided in and subject to Section 5.1.3, shall continue in full force and effect notwithstanding any termination of this Agreement for any reason.

**8.4 Governmental Approvals:** Other than the Surface Transportation Board Approvals. Buyer's and Seller's obligations hereunder are subject to, and conditional upon, Buyer's obtaining all licenses, approvals, franchises, notices, variances, exemptions, consents and other authorizations (collectively, the "Approvals") issued by all Governmental Authorities that relate to or otherwise are useful or are necessary in connection with the ownership, operations or other use of the Railroad Assets by Buyer or Buyer's assignees. Seller shall cooperate with Buyer in Buyer's obtaining the Approvals including, without limitation, executing all documents and applications and sending appropriate representatives to meetings as reasonably required without unduly affecting the representative's other responsibilities. Each Party shall pay its own expenses and shall share equally all joint expenses. In the event that all such Approvals are not validly and irrevocably issued to Buyer on terms and conditions reasonably satisfactory to Buyer, without qualification, except such qualification as may be reasonably satisfactory to Buyer, and no longer subject to appeal, by not later than the Due Diligence Contingency Date, either Party shall have the option to terminate this Agreement by written notice to the other Party by such date whereupon (i) except as provided in Section 3.3, all Deposits made hereunder shall be returned forthwith, (ii) except as hereinafter set forth, all obligations of the Parties shall cease and (iii) this Agreement shall be void and without recourse to the parties hereto. Notwithstanding the foregoing, (i) both Parties' obligation to perform the Clearance Work, as provided in and subject to Section 4 and Buyer's right to run the Additional Trains as provided in and subject to Section 5.1.3, shall continue in full force and effect notwithstanding any termination of this Agreement for any reason and (ii) the STB Decision shall not be subject to this Section.

## **9. SELLER'S TAX TREATMENT CONTINGENCY**

**9.1 Tax Opinion.** Seller's obligations hereunder are subject to and conditioned upon Seller's receiving an opinion from a recognized reputable tax attorney of its choice, at Seller's sole cost and expense, by not later than ninety (90) days from the Effective Date (the "Tax Opinion Contingency Date"), that the transaction provided for herein "should" constitute an "Involuntary Conversion" as defined in Section 1033(a) of the Internal Revenue Code of 1986, as amended, (the "Tax Opinion"). If, after having used reasonable efforts, Seller fails to obtain the Tax Opinion by the Tax Opinion Contingency Date, Seller shall so notify Buyer on or before such date.

**9.2 Failure to Obtain Tax Opinion.** If Seller fails to obtain the Tax Opinion, the transactions provided for herein shall proceed nevertheless except that, on the First Closing Date, Buyer shall record one or more Orders of Taking which shall take title to the Grand Junction Branch, the South Coast Lines (including an easement in the New Bedford Yard) and the Boston Terminal Running Track by eminent domain, and on the Second Closing Date Buyer shall record an Order of Taking which shall take title to the Boston Main Line by eminent domain. In such event, Seller agrees that the First Closing Purchase Price and the Second Closing Purchase Price, respectively, shall constitute the entire amount of money that Seller is entitled to be paid by Buyer as required by applicable Federal and state law including, without limitation, all state and federal relocation assistance and benefits, and Seller shall execute releases at the Closing releasing all of Seller's rights against Buyer for additional compensation for, or in connection with, the taking of the Railroad Assets. Each Order of Taking, when recorded, shall specifically provide that it is subject to (a) the restrictions and easements reserved by Seller in the Deed including, without limitation, the CSXT Easement, (b) the Operating Agreement, (c) the Turnover Plan and (d) Buyer's and Seller's continuing obligations to perform their respective Clearance Work. Buyer agrees that if it exercise its power of eminent domain in lieu of the Second Closing, Buyer shall take such steps as are necessary to provide Seller with the full benefit of the EOT Easement (as agreed to pursuant to Section 10.2) if Seller does not already enjoy the benefit of the EOT Easement. Notwithstanding the foregoing to the contrary, to the extent permitted by law, in no event may Buyer make a taking (a) with respect to the property to be transferred in the Second Closing unless and until all preconditions to the Second Closing have been met in full, including without limitation, Intermodal Operations Relocation and Clearance Work, or (b) after this Agreement has been terminated. This provision shall survive the termination of this Agreement.

## **10. MUTUAL CONTINGENCIES**

### **10.1 Surface Transportation Board Contingency, FRA Notice.**

**10.1.1** Buyer and Seller shall take all reasonably necessary steps to secure the determination of the Surface Transportation Board ("STB") that it has no jurisdiction over any of the transactions contemplated in this Agreement, or over any of the transactions contemplated in any ancillary agreement contemplated by this Agreement (the "STB Decision"). The Parties agree that they shall cooperate with each other in connection with all filings made with the STB and that neither Party shall make any filing with the STB without first having delivered a copy of such filing to the other Party at least seven (7) days before such filing is made.

**10.1.2** Either Party shall have the unilateral right to terminate and rescind this Agreement prior to the First Closing or the Second Closing, as the case may be, if:

(i) the STB has not dismissed the petition filed pursuant to Section 10.1.1 of this Agreement; and

(ii) the STB shall have found that it has jurisdiction over any of the transactions contemplated in this Agreement and, in connection therewith,

shall have imposed any conditions, including labor protective conditions, which either Party in its sole and absolute discretion deems unacceptable; or

(iii) the Parties have not complied with the conditions, if any, imposed by the STB, in its decision, to the extent required by the STB's decision to be performed prior to Closing; or

(iv) any of the transactions shall have been stayed or enjoined by the STB or by any court; or

(v) any claim, litigation, labor dispute or work stoppage shall be threatened or pending in connection with any of the transactions contemplated in the Non-Binding Term Sheet dated as of July 31, 2006 between the Parties, this Agreement, any agreement to be executed in connection herewith, or any agreement between Buyer and Seller related to the Subject Property.

10.1.3 Buyer shall provide notification to the Federal Railroad Administration ("FRA") pursuant to 49 C.F.R. § 213.5(c), if applicable, at least thirty (30) days prior to the First Closing Date.

10.1.4 If this Definitive Agreement is terminated pursuant to Section 10.1.2 above, (i) subject to Section 3.3, the Deposit shall be returned forthwith, (ii) except as hereinafter set forth, all obligations of the Parties shall cease and (iii) this Agreement shall be void and without recourse to the parties hereto. Notwithstanding the foregoing, both Parties' obligation to perform the Clearance Work, as provided in and subject to Section 4 and Buyer's right to run the Additional Trains as provided in and subject to Section 5.1.3, shall continue in full force and effect notwithstanding any termination of this Agreement for any reason.

10.2 Parcel C-3 Easement Agreement Contingency. Buyer and Harvard University Beacon Yards, LLC ("Harvard"), are currently parties to an Option Agreement (the "Parcel C-3 Option Agreement"), dated May 29, 2003, recorded with the Suffolk County Registry of Deeds at Book 31596, Page 235, given by Harvard to Buyer pursuant to which Buyer may utilize certain easements over Parcel C-3 as shown on Exhibit B hereto, as the same may be renamed and reconfigured within the bounds of the original parcel. The obligations of both Buyer and Seller under Section 2.3 are subject to, and conditioned upon, Seller, Buyer and Harvard negotiating an agreement satisfactory to each of Buyer, Seller and Harvard pursuant to which Harvard and Buyer agree that, in the event that the conditions set forth in Section 2.3.3 occur, Seller shall have the full benefit of an easement (the "EOT Easement") over Parcel C-3 for the conduct of the Solid Waste Operations or Bulk Transfer Operations (or both) for a period not to exceed five (5) years from the Second Closing Date.

**11. REPRESENTATIONS, WARRANTIES AND COVENANTS; TERMINATION RIGHT**

**11.1 Representations, Warranties and Covenants of Buyer.** To induce Seller to enter into this Agreement, Buyer hereby covenants with Seller and makes the following representations and warranties.

11.1.1 Buyer is a public agency organized as an executive office of the Commonwealth of Massachusetts, is duly qualified to conduct business in the Commonwealth of Massachusetts, and has the requisite authority to acquire properties and to carry on its business as currently conducted. Buyer has the requisite power, right and authority to enter into, execute, deliver, and perform the terms and conditions of this Agreement. Mass. Gen. L. c. 161(c) § 6(d) authorizes the Buyer to acquire property by eminent domain.

11.1.2 This Agreement, and the documents to be executed and delivered by Buyer in connection with the consummation of the transaction contemplated by this Agreement, have been (or with respect to documents to be executed after the Effective Date, will be) duly executed and delivered by Buyer and (with respect to documents to be executed after the Effective Date, will) constitute valid and binding agreements of Buyer enforceable upon Buyer in accordance with their respective terms and conditions.

11.1.3 All requisite action has been taken by Buyer to enter into this Agreement and to consummate the transaction contemplated hereby.

11.1.4 To the best of Buyer's knowledge, the execution, delivery of performance of this Agreement and compliance with its terms will not conflict with or result in the breach of any agreement, contract, law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other Governmental Authority of which Buyer has knowledge or notice, or any other agreement, document or instrument by which Buyer is bound. There are no claims, lawsuits or proceedings pending in any court or Governmental Authority the outcome of which could materially adversely affect Buyer's ability to perform its obligations under this Agreement.

11.1.5 Buyer has not filed any petition, nor been the party against whom a petition has been filed in relation to any bankruptcy, insolvency, request for reorganization, for the appointment of a receiver or trustee, or for the arrangement of debt, nor to the best of Buyer's knowledge, is any such action threatened or contemplated.

11.1.6 Buyer has not retained any broker, agent or finder or paid or agreed to pay any broker, agent or finder on account of this Agreement or the transactions contemplated hereby.

11.1.7 Except as otherwise specifically provided herein, no consent, waiver, license, order or permit of any Governmental Authority is required to

be made or obtained by Buyer for the execution, delivery or performance of this Agreement and the consummation of the transactions on the part of Buyer contemplated hereby or thereby.

11.1.8 All necessary authorizations to borrow funds sufficient to allow Buyer to perform all of its obligations under the Clearance Work Agreement have been obtained as of the date hereof, all necessary funding and appropriations sufficient to allow Buyer to close the purchase of the Railroad Assets will be available on the respective Closing Dates, and all funding necessary to enable Buyer to perform Buyer's Clearance Work in accordance with the Clearance Work Agreement will be available as Buyer's Clearance Work proceeds.

**11.2 Representations, Warranties and Covenants of Seller.** Nothing in this Section 11.2 shall apply to Labor Protection, a Labor Challenge or Environmental Matters. To induce Buyer to enter into this Agreement, Seller hereby covenants with Buyer and makes the following representations and warranties.

11.2.1 Seller is a corporation validity existing and in good standing under the laws of the Commonwealth of Virginia and is duly qualified to do business in the Commonwealth of Massachusetts, and has the requisite corporate authority to own its properties and to carry on its business as currently conducted. Seller has the full power, right and authority to enter into, execute, deliver, and perform the terms and conditions of this Agreement.

11.2.2 This Agreement, and the documents to be executed and delivered by Seller in connection with the consummation of the transaction contemplated by this Agreement, have been (or with respect to documents to be executed after the Effective Date, will be) duly executed and delivered by Seller and (or with respect to documents to be executed after the Effective Date, will) constitute valid and binding agreements of Seller enforceable upon Seller in accordance with their respective terms and conditions.

11.2.3 All requisite corporate action has been taken by Seller to enter into this Agreement and to consummate the transaction contemplated hereby.

11.2.4 To the best of Seller's knowledge, the execution, delivery and performance of this Agreement and compliance with its terms will not conflict with or result in the breach of any agreement, contract, law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other Governmental Authority of which Seller has knowledge or notice, or any other agreement, document or instrument by which Seller is bound except as may be provided in the Included Intangibles. There are no claims, lawsuits or proceedings pending in any court or Governmental Authority the outcome of which could materially adversely affect Seller's ability to perform its obligations under this Agreement.

11.2.5 Seller has not filed any petition, nor has been the party against whom a petition has been filed in the last five (5) years in relation to any bankruptcy, including, request for reorganization, for the appointment of a receiver or trustee, or for the arrangement of debt, nor to the best of Seller's knowledge, is any such action threatened or contemplated.

11.2.6 Seller has not retained any broker, agent or finder or paid or agreed to pay any broker, agent or finder on account of this Agreement or the transaction contemplated hereby.

11.2.7 Except as otherwise specifically provided herein, no consent, waiver, license, order or permit of any Governmental Authority is required to be made or obtained by Seller for the execution, delivery or performance of this Agreement and the consummation of the transactions on the part of Seller contemplated hereby or thereby.

11.2.8 Except as disclosed by Seller to Buyer in writing prior to Closing, there is no action or proceeding pending or, to Seller's knowledge, threatened challenging Seller's right, title and interest in and to the Subject Property at law or in equity or the consummation and performance of the transactions contemplated by this Agreement, which challenge, if successful, would result in any material adverse effect upon any such transaction.

11.2.9 None of the Railroad Lines has been abandoned or discontinued, by Seller, and Seller has not filed a request for any such abandonment or discontinuance with the STB or otherwise.

11.3 Representations, Warranties and Covenants of MBTA. To induce Seller to enter into this Agreement, MBTA hereby covenants with Seller and makes the following representations and warranties.

11.3.1 MBTA is a body politic and corporate, and a political subdivision of the Commonwealth of Massachusetts, is duly qualified to conduct business in the Commonwealth of Massachusetts, and has the requisite authority to operate passenger trains and to carry on its business as currently conducted. MBTA has the requisite power, right and authority to enter into, execute, deliver, and perform the terms and conditions of Sections 5.1.3, 5.1.4, 5.1.5, 5.2, 11.3, 11.5 12, and 13.4 of this Agreement (the "Joined Sections").

11.3.2 This Agreement, and the documents to be executed and delivered by MBTA in connection with the consummation of the transaction contemplated by this Agreement, have been (or with respect to documents to be executed after the Effective Date, will be) duly executed and delivered by MBTA and the Joined Sections and said documents to be executed and delivered by MBTA in connection with the consummation of the transaction contemplated by this Agreement (or with respect to documents to be executed

after the Effective Date, will) constitute valid and binding agreements of MBTA enforceable upon MBTA in accordance with their respective terms and conditions.

11.3.3 All requisite action has been taken by MBTA to enter into the Joined Sections and to consummate the transaction contemplated thereby.

11.3.4 To the best of MBTA's knowledge, the execution, delivery or performance of the Joined Sections and compliance with their terms will not conflict with or result in the breach of any agreement, contract, law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other Governmental Authority of which MBTA has knowledge or notice, or any other agreement, document or instrument by which MBTA is bound. There are no claims, lawsuits or proceedings pending in any court or Governmental Authority the outcome of which could materially adversely affect MBTA's ability to perform its obligations under the Joined Sections.

11.3.5 MBTA has not filed any petition, nor been the party against whom a petition has been filed in relation to any bankruptcy, insolvency, request for reorganization, for the appointment of a receiver or trustee, or for the arrangement of debt, nor to the best of MBTA's knowledge, is any such action threatened or contemplated.

11.3.6 MBTA has not retained any broker, agent or finder or paid or agreed to pay any broker, agent or finder on account of this Agreement or the transactions contemplated hereby.

11.3.7 Except as otherwise specifically provided herein, no consent, waiver, license, order or permit of any Governmental Authority is required to be made or obtained by MBTA for the execution, delivery or performance of the Joined Sections and the consummation of the transactions on the part of MBTA contemplated hereby.

11.4 Real Property. There is no pending or, to Seller's knowledge, threatened condemnation or other similar proceeding of any part of the Railroad Assets, except by Buyer.

11.5 Survival. All of the warranties and representations made by the Parties and MBTA hereunder shall survive the Second Closing Date for a period of one year.

## **12. DEFAULT**

12.1 Buyer Default. If Buyer fails to perform its obligations pursuant to this Agreement at or prior to a Closing for any reason except the failure by Seller to perform hereunder, or if prior to a Closing any one or more of Buyer's representations or warranties are breached in any material respect and such failure is not cured by Buyer within ten (10) business days (or such longer period of time as may be reasonably required to cure such default, provided that Buyer is acting with due diligence) following receipt of notice of such default from Seller, Seller may elect to terminate this Agreement by giving Buyer written notice of such election prior



to a Closing. In any such case, except as set forth below, Seller's sole and exclusive remedy shall be to retain from the Deposit an amount equal to Seller's reasonable third party costs associated with the transaction described in this Agreement as agreed-upon liquidated damages in full settlement of any and all claims arising under, or in any way related to, this Agreement and with no further recourse against Buyer, either at law or in equity. If Buyer defaults after the First Closing and Seller no longer holds the Deposit, Buyer shall pay to Seller as liquidated damages the sums which Seller would have been permitted to retain out of the Deposit. Except as set forth in Section 12.3, in no event shall Buyer be liable to Seller for money damages hereunder in excess of \$10,000,000.00, and (ii) Seller irrevocably waives any and all right to pursue specific performance of the Agreement or any other legal or equitable remedy otherwise available to Seller. Notwithstanding the foregoing, both Parties' obligation to perform the Clearance Work, as provided in and subject to Sections 4 and Buyer's right to run the Additional Trains as provided in and subject to Section 5.1.3, shall continue in full force and effect notwithstanding any termination of this Agreement for any reason.

**12.2 Seller Default.** If Seller fails to perform its obligations pursuant to this Agreement for any reason except the failure by Buyer to perform hereunder, or if prior to a Closing, any one or more of Seller's representations or warranties are breached in any material respect, and such failure is not cured by Seller within ten (10) business days (or such longer period of time as may be reasonably required to cure such default, provided that Seller is acting with due diligence) following receipt of notice of such default from Buyer, Buyer may elect to terminate this Agreement by giving Seller written notice of such election prior to a Closing. In any such case, except as set forth below, Buyer's sole and exclusive remedy shall be money damages limited to reimbursement for any reasonable third party expenses including, without limitation, fees paid to lawyers, engineers, consultants and title examiners, reasonably incurred by Buyer in connection with this Agreement and the transactions contemplated herein. Except as set forth in Section 12.3, in no event shall Seller be liable to Buyer for money damages hereunder in excess of \$10,000,000.00. Notwithstanding the foregoing to the contrary, Buyer may, by notice given no later than thirty (30) days after such default (time being of the essence), waive its election to terminate this Agreement and pursue money damages for reimbursement of third party expenses and, instead, elect, as its sole and exclusive remedy, the remedy of specific performance. If Buyer makes such election for specific performance, it is agreed that specific performance shall be of this Agreement as a whole, including satisfaction of all preconditions to Seller's obligations to close. Notwithstanding the foregoing, both Parties' obligation to perform the Clearance Work, as provided in and subject to Section 4 and Buyer's right to run the Additional Trains as provided in and subject to Section 5.1.3, shall continue in full force and effect notwithstanding any termination of this Agreement for any reason .

**12.3 Reserved Remedies.** Notwithstanding anything to the contrary contained in this Agreement or the Clearance Work Agreement, Buyer, Seller and MBTA shall each be entitled to pursue the remedy of specific performance of the respective rights and obligations contained in Sections 4 and 5 of this Agreement. Further, Seller's right to withhold the Deposit as set forth in Section 3.3 shall not be construed as an admission that the Deposit provides an adequate remedy at law in the event Buyer does not complete Buyer's Clearance Work or cease operating the First Stage Trains as set forth in Section 5.1.3. The Parties acknowledge that money damages may not be an adequate remedy at law in such event, however, if (i) Seller elects not to pursue specific performance, or (ii) the remedy of specific performance is not available or does not result in either

(x) cessation of the First Stage Trains, or (y) completion of Buyer's Clearance Work by that date that is two (2) years later than the date set forth in Section 4.1 for the completion of Buyer's Clearance Work, Seller shall be entitled to, as liquidated damages and not as a penalty, the aggregate out of pocket costs and expenses of Seller's Clearance Work, in which case the First Stage Trains may continue to run notwithstanding the lack of completion of Buyer's Clearance Work. The limitation on money damages identified in Section 12.1 shall not be a defense to Seller's claim for specific performance of Buyer's Clearance Work. Further, the Parties acknowledge that money damages may not be an adequate remedy at law in the event that Seller fails to complete the Seller's Clearance Work, however, if (i) Buyer elects not to pursue specific performance, or (ii) the remedy of specific performance is not available or does not result in completion of Seller's Clearance Work by that date that is two (2) years later than the date set forth in Section 4.2 for the completion of Seller's Clearance Work, Buyer shall be entitled to, as liquidated damages and not as a penalty, the aggregate out of pocket costs and expenses of Buyer's Clearance Work. The limitation on money damages identified in Section 12.2 shall not be a defense to Buyer's claim for specific performance of Seller's Clearance Work.

12.4 Survival. The provisions of this Section 12 shall survive termination of this Agreement and delivery of the Deed or Deeds.

### 13. EMINENT DOMAIN

13.1 Attempted Taking: Purchase Price. Seller and Buyer hereby explicitly acknowledge and agree that they are entering into this Agreement in lieu of Seller's taking of the Railroad Assets by the exercise of Buyer's power of eminent domain. Buyer and Seller further agree that the Purchase Price is equal to the amount that Buyer would have been obligated to pay to Seller, including both state and federal relocation assistance and benefits, for the condemnation of the Railroad Assets in the condition the Railroad Assets are to be delivered to Buyer under this Agreement. In the event that Buyer elects, from time to time, to take all or any part of the Railroad Assets by eminent domain, the full amount payable by Buyer to Seller in such event, including both state and federal relocation benefits and assistance, for the part of the Railroad Assets so taken, shall be calculated on a pro rata basis based on the Purchase Price payable hereunder being equal to the amount payable for a taking of all of the Railroad Assets and shall be allocated as near as is reasonably possible to the allocation of the Purchase Price among the Railroad Lines and shall be considered to be received in full satisfaction of the Purchase Price under this Agreement.

13.2 Compensatory Claims. Nothing contained herein shall be construed to preclude Seller from prosecuting any claim directly against the condemning authority for the value of the CSXT Easement in accordance with applicable law for any interests or properties belonging to Seller other than the Railroad Assets and, provided, further, that nothing contained herein shall be construed to create any interest or entitlement in Buyer to any and all funds payable to Seller for such total or partial taking of the Subject Property or any taking of the Seller's property.

13.3 Confirmatory Taking to Perfect Title. Nothing contained herein shall preclude Buyer from exercising its eminent domain powers for any purpose with respect to the Subject Property nor shall this Agreement be construed to limit Buyer's ability to record a "Confirmatory Order of Taking" for the First Closing Assets following the First Closing and for the Second Closing Assets following the Second Closing; provided, however, that such exercise

shall not modify, amend, limit or restrict the CSXT Easement, the Operating Agreement, the Clearance Work Agreement, any Other Operating Rights, or the rights and obligations of the parties hereto under this Agreement and, provided, further, that any such exercise shall be done at no cost or expense to Seller.

**13.4 Circumstances Following Eminent Domain Taking.** Any acquisition by Buyer or MBTA of the Railroad Assets by eminent domain shall not excuse either Buyer or Seller from the performance of their respective Clearance Work obligations under Article 4 hereof, which shall be separate from any such eminent domain taking or takings. In the event that Buyer or MBTA takes any of the First Closing Assets by eminent domain, then at such time, Seller and Buyer shall execute the Operating Agreement, Buyer or MBTA shall reserve the CSXT Easement to Seller, and Seller shall deliver to Buyer or MBTA those items listed in Sections 2.5.1(ii), 2.5.1(iii) and 2.5.1 (xii), but neither Party shall be responsible for any other deliveries pursuant to Section 2.5. In the event that Buyer or MBTA takes any of the Second Closing Assets by eminent domain, then at such time, Buyer or MBTA shall reserve the CSXT Easement to Seller. At the First Closing, Buyer and Seller shall execute and deliver to the other Party the Turnover Plan and the Operating Agreement. In no event may the exercise of eminent domain affect the Operating Agreement or the Clearance Work Agreement. Notwithstanding anything to the contrary contained herein, Buyer and MBTA shall not exercise eminent domain powers with respect to the Boston Main Line unless all preconditions to the Second Closing have been met, including without limitation the Intermodal Operating Relocation and Buyer's Clearance Work.

**13.5 Condemnation by Others.** If proceedings in eminent domain are instituted with respect to the Railroad Lines or any portion thereof, by any governmental entity so authorized, other than Buyer or MBTA, in which the potential award exceeds \$200,000.00, either Party may terminate this Agreement by written notice to the other Party, whereupon (i) subject to Section 3.3, the Deposit then being held by the Seller shall be returned forthwith, (ii) except as hereinafter set forth, all obligations of the Parties hereto shall cease and (iii) this Agreement shall be void and without recourse to the Parties. Notwithstanding the foregoing, both Parties' obligation to perform the Clearance Work, as provided in and subject to Section 4 and Buyer's right to run the Additional Trains as provided in and subject to Section 5.1.3, shall continue in full force and effect notwithstanding any termination of this Agreement for any reason. In the event that the potential award is \$200,000.00 or less, the Parties shall proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award, and Buyer shall have the sole right after the Closing to negotiate and otherwise deal with the condemning authority in respect of such matter. An eminent domain taking by Buyer or MBTA shall be governed by the prior provisions of this Article 13.

#### **14. DISCLAIMER OF WARRANTY**

EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THE DEED, BILL OF SALE AND/OR THIS AGREEMENT, BUYER HEREBY ACKNOWLEDGES THAT THE RAILROAD ASSETS WILL BE TRANSFERRED AS IS, WHERE IS AND WITH ALL FAULTS, DEFECTS AND CONDITIONS OF ANY KIND, NATURE OR DESCRIPTION AS OF THE CLOSING DATE, AND THAT THERE HAVE BEEN NO REPRESENTATIONS, WARRANTIES, GUARANTEES, STATEMENTS OR INFORMATION, EXPRESSED OR IMPLIED, PERTAINING TO SUCH PROPERTY, THE VALUE, DESIGN OR CONDITION THEREOF, ITS

MERCHANTABILITY OR SUITABILITY FOR ANY USE OR PURPOSE OR ANY OTHER MATTER WHATSOEVER, MADE TO OR FURNISHED TO BUYER BY SELLER OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN.

**15. CONDITION OF PROPERTY**

Except as may be expressly set forth in the Deed, Bill of Sale and/or this Agreement, and subject to the rights of termination and rescission expressly set forth herein that are exercisable prior to the Closing, Buyer agrees to accept and purchase the Railroad Assets, without warranty, except as otherwise specifically provided for herein, "as is, where is," as of the Effective Date, subject to reasonable wear and tear.

**16. NOTICES**

All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall, unless otherwise provided herein, be given or served: (i) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (ii) by overnight delivery using a nationally recognized overnight courier, (iii) by personal delivery, or (iv) by facsimile, evidenced by confirmed receipt. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) business day after such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified between the hours of 8:00 a.m. and 5:00 p.m. of any business day with delivery made after such hours to be deemed received the following business day. A Party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to Buyer shall be deemed given by Buyer and notices given by counsel to Seller shall be deemed given by Seller.

Notices to Seller shall be sent to:

CSX Transportation, Inc.  
500 Water Street – J150  
Jacksonville, FL 32202-5184  
Attn: Kim Bongiovanni, Esq.

with copy to:

Peter J. Shudtz, Esq.  
CSX Corporation  
Suite 560 National Place  
1331 Pennsylvania Avenue, N.W.  
Washington DC 20004

Notices to Buyer shall be sent to:

Executive Office of Transportation  
Ten Park Plaza  
Boston, MA 02116-3974  
Attn: Secretary

and a copy to:

Foley Hoag LLP  
155 Seaport Boulevard  
Boston, MA 02210  
Attn: Jacob N. Polatin, Esq.

Notices to MBTA shall be sent to:  
[add address]

And a copy to:

Goulston & Storrs P.C.  
400 Atlantic Ave.  
Boston MA 02110  
Attn: James A. Aloisi, Esq.

## **17. MERGER**

The delivery of the Deed for a particular Railroad Line by Seller, and Seller's performance of its obligations with respect to such Railroad Line, and the acceptance thereof by Buyer, shall be deemed to be a full performance and discharge of every agreement and obligation contained herein with respect to such Railroad Line except as otherwise expressly provided herein.

## **18. ENVIRONMENTAL MATTERS; ENVIRONMENTAL CONDITION OF THE RAILROAD ASSETS**

**18.1 Definitions.** As used in this Section 18 and elsewhere in this Agreement, the following terms shall have the meanings provided below.

**18.1.1 Environmental Law** means any applicable federal, state or local law, statute, code, ordinance, rule, regulation, administrative or judicial order (whether unilateral or consented to) or other requirement relating to the environment, Hazardous Materials or natural resources and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 33 U.S.C. § 2601 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., and Massachusetts General Laws c. 21E, as

such laws have been amended or supplemented, and the rules and regulations promulgated thereunder, and all analogous state or local statutes.

**18.1.2 Environmental Claim** means any and all administrative, regulatory or judicial actions, suits, judgments, demands, directives, claims, liens, investigations, proceedings or written or oral notices of noncompliance or violation by or from any person alleging liability of any kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resource damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from (1) the presence or Release of, or exposure to, any Hazardous Material at any location, or (2) the failure to comply with any Environmental Law.

**18.1.3 Hazardous Material** means any material, substance or waste, in whatever form, classified, characterized, designated or otherwise regulated as hazardous, toxic, corrosive, flammable, reactive, infectious, radioactive, a pollutant or a contaminant or words of similar meaning or effect under any Environmental Law and includes, without limitation, petroleum, petroleum products, asbestos, urea formaldehyde and polychlorinated biphenyls.

**18.1.4 Release** means any actual or threatened release, spill, leaking, pumping, pouring, emission, emptying, discharge, dumping, deposit, disposal, arrangement for disposal, injection, escaping, leaching, dispersal or migration into or through the environment.

## **18.2 Environmental Permits; Representations and Warranties.**

**18.2.1** On or before the First Closing Date, the Parties shall develop a list of all permits under Environmental Laws used in, or necessary for, the Business or the ownership and operation of the Railroad Assets ("Environmental Permits") (and all pending applications for any such Environmental Permits, the "Environmental Schedule"). Buyer acknowledges that, except as provided herein, Seller makes no guarantee, representation or warranty regarding the physical or environmental condition of the Subject Property, and Seller expressly disclaims any and all obligation and liability to Buyer regarding any defects which may exist with respect to the condition of the Subject Property. Notwithstanding the foregoing, subject to Section 18.2.3 below, Seller represents and warrants that, except as disclosed on Exhibit H, Seller has no knowledge of any notices, claims or assessments regarding any environmental conditions affecting the Subject Property that would be the basis for imposing any liability on the owner of the Subject Property.

**18.2.2** Not later than ten (10) days after the Effective Date, Seller shall have used commercially reasonable efforts to make available to Buyer

all material reports, investigations, studies, audits, tests, reviews or other analyses relating to the presence or Release of Hazardous Materials or the Environmental Laws conducted by or in the possession of Seller ("Environmental Reports") in relation to the Railroad Assets. Seller makes no warranties or representations about the accuracy or completeness of the Environmental Reports; provided, that subject to Section 18.2.3 below, Seller has no actual knowledge that any Environmental Report is inaccurate in any material respect. The Environmental Reports shall be furnished to Buyer pursuant a mutually satisfactory confidentiality agreement.

18.2.3 Seller's representations and warranties in Sections 18.2.1 and 18.2.2 above are made to the knowledge of said Seller, said knowledge being limited to the actual knowledge of D. Kevin Hurley, Director of Real Estate Services for CSX Real Property, Inc. and such other persons as the parties may mutually agree, without undue investigation or inquiry. If and to the extent Buyer has, as of the Closing, knowledge that any of said representations or warranties is untrue and nevertheless elects to close, then Seller's representations and warranties shall be deemed modified by such knowledge of Buyer. In addition, no action or claim may be made upon any such representation or warranty after ten (10) years from the date of the Closing with respect to the portion of the Subject Property covered by said representation and warranty, and in any event Seller's liability for breach of said representations and warranties shall be deemed limited to and modified by the provisions of Section 18.9 herein.

### 18.3 Environmental Inspections.

18.3.1 After the execution of this Agreement by all of the Parties, and prior to the Closing, Buyer and/or its agents shall be permitted to have access to the Railroad Assets for the purposes of conducting Due Diligence regarding the presence or Release of Hazardous Materials or other matters pertaining to Environmental Laws, subject to the Right of Entry Agreement and an environmental testing and evaluation methodology to be agreed between the Parties. Buyer hereby acknowledges that Seller has not authorized physical testing of the Railroad Assets pertaining to the Release of Hazardous Materials or other matters pertaining to Environmental Laws.

18.3.2 With regard to such environmental testing programs, Seller reserves the right to monitor and approve in its sole and absolute discretion all physical procedures in the conduct of any environmental assessments, tests, studies, measurements or analyses performed by or for Buyer in or on the Railroad Assets pursuant to Section 18.3.1 hereof. The Parties agree that Buyer has not yet submitted a request to Seller to conduct environmental testing. Buyer shall: (a) notify Seller in writing no less than five (5) days prior to initiating any such environmental work; (b) keep Seller fully apprised of the progress of, and procedures followed with respect to, all such environmental work; and (c) fully cooperate with all reasonable requests of Seller in

undertaking and carrying out such work. Buyer shall deliver to Seller, at no cost to Seller, within twenty (20) days after receipt, copies of all final results, assessments, reports and studies, whether of an environmental nature or otherwise, resulting from any tests or inspections conducted by Buyer.

18.3.3 If the presence or Release of Hazardous Materials relating to the Railroad Assets is revealed by the Environmental Reports, the studies and tests conducted by Buyer pursuant to this Agreement or other information, in an amount and/or concentration beyond the minimum acceptable levels established by current applicable governmental authorities, or, if Buyer is otherwise, in its sole discretion, unwilling to accept the environmental condition of the Railroad Assets as a result of such Environmental Reports, tests or assessments, Buyer may elect to terminate this Agreement pursuant to Section 8.3.1 hereof.

18.4 As Is Purchase. If Buyer elects not to secure environmental tests or inspections, or if Buyer does not, pursuant to Section 8.3.1 hereof, elect to terminate this Agreement after receipt of test results, Buyer shall take the Subject Property "as is" at Closing and, subject to Section 18.5, releases all rights or claims against Seller relating to such condition or for any costs of remediation or cure of any environmental condition, including without limitation claims for contribution with respect to third party claims.

18.5 Cost Sharing. If Buyer does not elect to terminate this Agreement pursuant to this Section 18, Seller shall remain liable for, and shall reimburse Buyer for, fifty percent (50%) of the actual out of pocket costs incurred for remediation of the Subject Property during the first ten (10) years after an applicable Closing, with respect to the property conveyed pursuant to said Closing, upon the following conditions:

- (a) Such remediation shall have been required to respond to the presence or Release of Hazardous Materials which was present or had been released prior to the date of an applicable Closing, with respect to property conveyed pursuant to said Closing, except to the extent caused or contributed to by Buyer;
- (b) Buyer shall pay for the other fifty percent (50%) of such remediation costs;
- (c) Buyer shall have provided Seller with all reasonably requested relevant information regarding the nature and extent of the condition requiring remediation and reasonable documentation as to the costs of remediation;
- (d) Seller's total aggregate reimbursement hereunder shall not exceed \$8,500,000.00;
- (e) Seller shall not be responsible for any single remediation claim or occurrence costing less than \$50,000.00;



- (f) Seller's obligations for reimbursement shall cease and be null and void from and after ten (10) years after the date of an applicable Closing, with respect to property conveyed pursuant to said Closing; and
- (g) Buyer shall have the right to allocate Seller's contribution for remediation to such portions of the Subject Property as Buyer may elect in its sole and absolute discretion. For example, Buyer may elect to allocate all of Seller's contribution to the South Coast Lines.

**18.6 Claims Against Third Parties:** Notwithstanding anything in this Agreement to the contrary, the Parties reserve any and all rights that they may have against third parties under statutory and/or common law, including the Environmental Laws, pertaining to the environmental matters addressed in this Section 18 and/or the environmental condition of the Railroad Assets, including but not limited to the presence or Release of Hazardous Materials in, on, under, from, to or about the Railroad Assets. In the event that a third party brings a contribution claim against Seller relating to a claim against that third party brought by Buyer or MBTA, any payments by Seller with respect to such third party contribution claims shall reduce, on a dollar for dollar basis, the maximum contribution by Seller under Section 18.5 or liability of Seller under Section 18.8.

**18.7 Exceptions.** Section 14 and Section 15 of this Agreement shall not apply to the environmental condition of the Railroad Assets and/or the environmental matters addressed in this Section 18.

**18.8 Liabilities for Breach of Representations and Warranties.** As set forth in Section 18.2, Seller's liability for breach of representation or warranty therein shall, in any event, be limited to a total of \$8,500,000.00, less any amounts payable by Seller pursuant to Section 18.5 or 18.6. By way of illustration and example, if Seller is liable for damages of \$1,000,000.00 for breach of a representation or warranty, Seller shall be liable for the entire \$1,000,000.00 attributable to said breach, whereupon its total liability for cleanup costs under Section 18.5 shall be reduced to \$7,500,000.00.

**18.9 Survival.** The provisions of this Section 18 shall survive Closing and the delivery of the Deed hereunder.

## **19. MISCELLANEOUS PROVISIONS**

**19.1 Rights and Remedies Cumulative: Waiver.** Except as expressly provided herein, the rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other Party. No failure of either Party to exercise any right or power under this Agreement, or to insist upon strict compliance with the provisions of this Agreement, and no custom or practice of either party at variance with this Agreement, shall constitute a waiver of such Party's right to demand exact and strict compliance by the other Party with the terms and conditions of this Agreement.

19.2 Severability. If any term of this Agreement or the application thereof to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and this Agreement shall otherwise remain in full force and effect.

19.3 Controversy. In the event of any controversy, claim or dispute between the Parties hereto affecting or relating to the purposes or subject matter of this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party all of its expenses, including, without limitation, reasonable attorneys' fees and costs.

19.4 Successors and Assigns. This Agreement shall inure to, and be binding upon, the Parties and their respective successors and assigns. Neither Party may assign its rights hereunder without the written consent of the other Party provided, however, that (i) Buyer may (x) assign its rights and obligations hereunder to the MBTA, and (y) designate one nominee or several nominees to take title to the Railroad Assets or any part thereof, provided however, in either such event, Buyer shall not be released from any of its obligations or liabilities hereunder, and (ii) Seller may assign its rights in the CSXT Easement pursuant to Section 2.4.1. Any assignee or nominee of Buyer as provided in subclauses (x) and (y) above shall be required to join in this Agreement as provided in Section 7.2.

19.5 Tax Free Exchange. Notwithstanding anything contained herein to the contrary, Buyer acknowledges that Seller may elect to designate the Subject Property as relinquished property to consummate a like-kind exchange or reverse like-kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended (an "Exchange") with respect to property that Seller will acquire either prior to or within one hundred eighty (180) days after Closing (the "Replacement Property"). In the event that Seller designates the Subject Property as relinquished property to consummate an Exchange with respect to the Replacement Property through the use of a qualified intermediary (the "Intermediary") and/or Exchange Accommodation Titleholder ("EAT"), Buyer shall cooperate (at no cost to Buyer) in structuring the transaction as an Exchange for the benefit of Seller and Buyer agrees to render all required performance under this Agreement to either the Intermediary or the EAT (either the Intermediary or the EAT referred to herein as the "Assignee") to the extent reasonably directed by Seller and to accept performance of all of Seller's obligations (except Seller's obligation to permit the Additional Trains and to perform Seller's Clearance Work both of which Seller shall remain responsible for) by the Assignee. Buyer consents to the assignment of this Agreement by Seller to an Assignee in connection with an Exchange. Buyer agrees that performance by the Assignee will be treated as performance by Seller, and Seller agrees that Buyer's performance to the Assignee will be treated as performance to Seller. No assignment of rights under this Agreement to an Assignee shall effect a release of Seller from obligations under this Agreement. In the event an Exchange should fail to occur for whatever reason, the sale of the Subject Property shall nonetheless be consummated pursuant to this Definitive Agreement. Seller agrees that: (i) the Closing shall not be delayed or affected by reason of the Exchange, nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to Seller's obligations under this Agreement; (ii) the Exchange shall not affect or diminish Seller's or Buyer's rights under this Agreement; (iii) Buyer shall not be required to acquire or hold title to any real property for purposes of consummating the Exchange; and (iv)

Buyer shall incur no additional liability or expense to effectuate the Exchange. Seller shall promptly reimburse Buyer for any of Buyer's actual, out-of-pocket costs incurred in connection with the Exchange and its activities under this section. Buyer makes no representations or guarantees to Seller that the transaction contemplated under this provision will result in any particular tax treatment to Seller or will qualify as an exchange under Section 1031 of the Internal Revenue Code. Seller hereby unconditionally guarantees the full and timely performance by the Assignee of each and every one of the representations, warranties, indemnities, obligations and undertakings of the Assignee. As guarantor, Seller shall be treated as a primary obligor with respect to these representations, warranties, indemnities, obligations and undertakings, and, in the event of breach of this Agreement, Buyer may proceed directly against Seller on this guarantee without the need to join the Assignee as a party to any action against Seller. Seller unconditionally waives any defense that it might have as guarantor that it would not have if it had made or undertaken these representations, warranties, indemnities, obligations and undertakings directly. In the event of the breach of any representations, warranties, obligations and undertakings by Seller or the Assignee, or in the event of any claim upon any indemnity of Seller or the Assignee (whether the representation, warranty, indemnity, obligation or undertaking is express or implied), Buyer's exclusive recourse shall be against Seller.

19.6 No Brokers. Buyer and Seller each represent and warrant to each other that it has dealt with no broker, finder or other person or entity in connection with the transactions contemplated by this Agreement and each party shall indemnify and hold harmless the other party against any liability, claim, loss, damage, cost or expense (including reasonable attorney's fees and disbursement) suffered as a result of the foregoing representation being, or being alleged to be, false.

19.7 Survival. The provisions of this Agreement that expressly contemplate performance after the Closing shall survive the Closing and shall not be deemed to be merged into or waived by the instruments of Closing.

19.8 Entirety and Amendments. This Agreement embodies the entire agreement between the Parties and supersedes all prior agreements and understandings relating to the Railroad Assets. This Agreement may be amended or supplemented only by an instrument in writing executed by the Party against whom enforcement is sought.

19.9 Time. Time is of the essence in the performance of this Agreement.

19.10 Construction. This Agreement shall be construed as a whole and in accordance with its fair meaning. The premises hereinbefore stated are incorporated as a part of the Agreement. Captions and organizations are for convenience only and shall not be used in interpreting this Agreement or construing meaning. Whenever the words "including", "include" or "includes" are used in this Agreement or the Closing documents, they shall be interpreted in a non-exclusive manner as though the words "without limitation" immediately followed the same. Masculine, feminine, or neuter gender and the singular and the plural number, shall each be considered to include the other whenever the context so requires. If any Party consists of more than one person, each such person shall be jointly and severally liable.

**19.11 Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the Commonwealth of Massachusetts, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m.

**19.12 Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the Parties may execute and exchange facsimile counterparts of the signature pages, provided that executed originals thereof are forwarded to the other Party on the same day by any of the delivery methods set forth in Section 16 other than facsimile.

**19.13 Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either Party at Closing, each Party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

**19.14 Designated Representative.** Seller has designated Stephen P. Crosby ("Seller's Designated Representative") and Buyer has designated Thomas Cahir, Deputy Secretary of Buyer ("Buyer's Designated Representative") to act as a liaison between Seller and Buyer, respectively, in connection with this Agreement. Whenever any approval, acceptance, consent, direction or action of one party is required pursuant to this Agreement, the requesting Party shall send to the other Party's Designated Representative a written notice requesting same, which notice shall: (i) describe in detail the matter for which such approval, acceptance, consent, direction or other action of the responding Party is requested; (ii) be accompanied by a copy of any contract, agreement or other document to be executed by the responding Party evidencing such approval, consent, acceptance, direction or action of requesting party; and (iii) be accompanied by such other documents, written explanations and information as may be reasonably necessary to explain the request fully and completely. The Designated Representative will communicate the responding Party's response to any such requests to by the requesting Party.

**19.15 Prohibition of Third Party Beneficiaries.** Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the parties hereto and their respective legal representatives, successors and assigns, any right or benefit under or by reason of this Agreement.

**19.16 Publicity.** Neither Party shall issue any press release or otherwise make a public statement with respect to this Agreement or the transactions contemplated hereby without the prior approval of the other Party except as may be required by applicable laws, in which case the Parties shall use their best efforts to consult with each other regarding the content of any such press release or statement prior to its release.

19.17 Exhibits. The Exhibits attached hereto are hereby incorporated as integral parts of this Agreement.

19.18 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts and applicable federal law.

19.19 Venue. Any action or proceeding brought hereunder shall be brought exclusively in the United States District Court situate in Boston, Massachusetts, unless such court lacks subject matter jurisdiction in which case any action or proceeding may be brought in any state court situate in Boston, Massachusetts.

19.20 No Recording. This Agreement shall not be recorded by either Party.


19.21 Effective Date. This Agreement shall not be in force or effective (nor shall the parties be obligated to start Clearance Work or permit Additional Trains to run) until it is executed by the Parties and the MBTA and the MBTA Board of Directors votes to approve this Agreement. If said conditions to effectiveness are not met by October 10, 2008, either Party may elect to terminate this Agreement, in which case this Agreement shall be deemed never to have been effective and shall be null and void with respect to all obligations, including without limitation, Clearance Work and Additional Trains.


SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, Buyer has caused this Agreement to be signed the 10<sup>th</sup> day of October, 2008, in triplicate, each of which shall be considered an original.

APPROVAL AS TO FORM

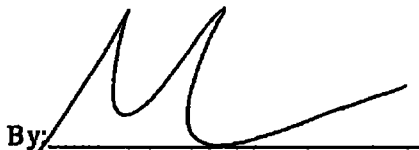
THE COMMONWEALTH OF  
MASSACHUSETTS, ACTING BY  
AND THROUGH THE EXECUTIVE  
OFFICE OF TRANSPORTATION AND  
PUBLIC WORKS

  
General Counsel

  
Name: Bernard Cohen  
Title: Secretary of Transportation and Public Works

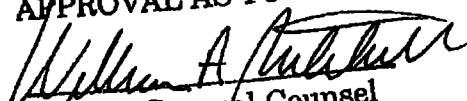
MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY  
only for the purposes of the joining  
in Sections 5.1.3, 5.1.4, 5.1.5, 5.2, 11.3,  
11.5, 12 and 13.4.

CSX TRANSPORTATION, INC.

By:   
Name:  
Title:

By:   
Name: Lisa Mancini  
Title: Vice President, Strategic  
Infrastructure, Initiatives

APPROVAL AS TO FORM:

  
MBTA General Counsel

*Signature Page to Definitive Agreement*

**EXHIBIT A**  
**The Railroad Lines**

**EXHIBIT A**  
**EOT/CSXT Asset List**

	FACILITY SEGMENT (See Notes)	TOTAL FACILITY LENGTH / AREA		
		Mile Posts		Miles
		From	To	
1.	BOSTON MAIN LINE (Boston to Worcester)			
	South Station to CP Cove	0.0	1.12	
	CP Cove to BPY / ALS*	1.12	3.10	1.98
	Main Line @ BPY / ALS (See Note 2)*	3.10	4.80	1.70
	BPY to Newton (Riverside)*	4.80	10.83	6.03
	Newton (Riverside) to Framingham*	10.83	21.38	10.55
	Framingham	21.38	22.40	1.02
	Framingham to Worcester	22.40	44.30	21.90
	Total	0.00	44.30	44.30
2.	GRAND JUNCTION BRANCH (Boston to Chelsea)	From	To	
a.	BPY to Boston Engine Terminal (BET)	0.00	2.70	2.70
b.	Valley Track@BET*	2.70	2.95	0.25
c.	BET to Chelsea*	2.95	5.70	2.75
d.	Chelsea to East Boston (as CSXT's interest may appear)	5.7.0	7.87	2.17
	Total			7.87
3.	SOUTH COAST LINES			
a.	New Bedford Secondary			
	Cotley to New Bedford (excluding New Bedford Yard)	13.40	31.80	17.40
	North Dartmouth Industrial Track (also known as the Watuppa Branch) (as CSXT's interest may appear)			6.0
b.	Fall River Secondary			
	Myricks to Fall River / State Line	0.00	14.20	14.20
	Total			37.6
4.	BOSTON TERMINAL RUNNING TRACK			
	Southampton St. to W. First Street	0.00	0.80	0.80



	FACILITY SEGMENT (See Notes)	TOTAL FACILITY LENGTH / AREA		
	W. First Street to Summer (including those portions of the W. First Street Yard shown on Exhibit A-1)	0.80	1.10	0.30
	Summer to BMIP*	1.10	2.25	1.15/2.2
	<b>Total</b>			

**NOTE:**

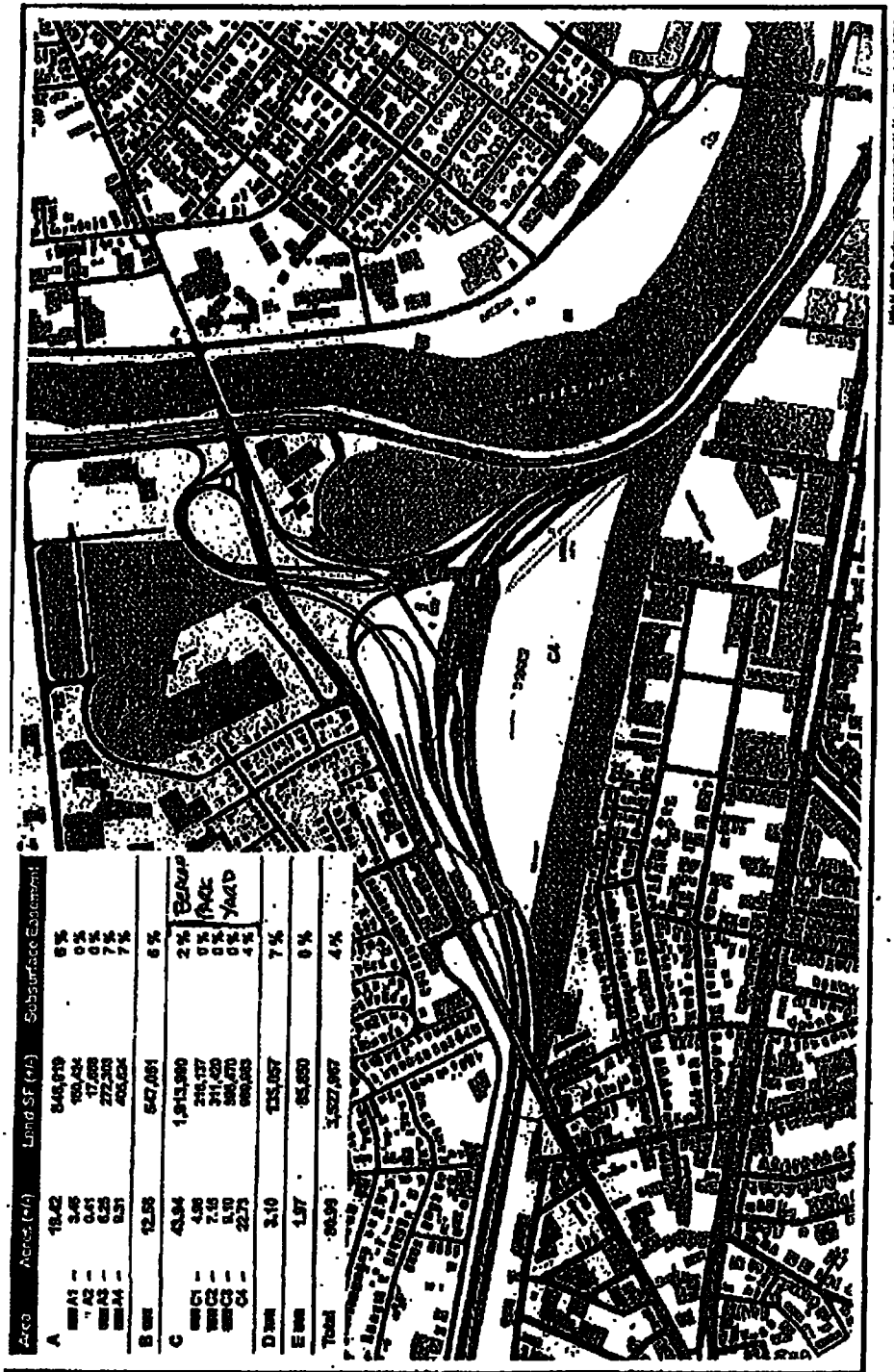
1. The Railroad Lines are shown in more detail on the plans attached as **Exhibit A-1**.
  2. The Parties acknowledge that the Second Closing, and the transaction with Harvard shall be coordinated so as to preserve to Seller (by way of a retained easement) the continued right to operate over the portion of the Boston Main Line passing through Beacon Park Yard (Parcel C-1, as the same may be redesignated).
- \* Segments marked with an asterisk are not owned by CSXT and are included solely for the convenience of EOT. CSXT makes no warranty of ownership or title to these segments, and reserves any Other Operating Rights therein.

**EXHIBIT A-1**

**Railroad Line Plans**

**[to be developed pursuant to Section 8.3.2]**

**EXHIBIT B**  
**Beacon Park Yard Plan**



**EXHIBIT C**

**Deleted**

**EXHIBIT D**  
**Non-Foreign Certification**

### NON-FOREIGN CERTIFICATION

Section 1445 of the Internal Revenue Code provides that a transferee (or buyer) of a U.S. real property interest must withhold tax if the transferor (or seller) is a foreign person. To inform the transferee that withholding of a tax is not required in connection with the transfer of a U.S. real property interest by CSX Transportation, Inc. ("Seller"), the undersigned being duly authorized hereby certifies as to the following on behalf of Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, foreign estate or non-resident alien individual (as those terms are defined in the Internal Revenue Code Section 1445 and regulations promulgated thereunder or under other provisions applicable thereto);
2. The U.S. Taxpayer Identification Number of Seller is [ \_\_\_\_\_ ];
3. The office address of Seller is \_\_\_\_\_.

The undersigned understands that this Certification may be disclosed to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury, the undersigned declares that he/she has examined this certification and, to the best of his/her knowledge and belief, it is true, correct and complete, and further declares that he/she has authority to sign this document on behalf of Seller.

Date: \_\_\_\_\_, 2008.

\_\_\_\_\_  
[Title]

**EXHIBIT E**  
**DESIGNATION OF PERSON**  
**RESPONSIBLE FOR TAX REPORTING**



**DESIGNATION OF PERSON RESPONSIBLE  
FOR TAX REPORTING UNDER  
INTERNAL REVENUE CODE SECTION 6045**

The undersigned \_\_\_\_\_ is hereby designated as the person who will make the information return and furnish the statement to the transferor as required under Section 6045 of the Internal Revenue Code of 1986, as amended.

The undersigned, hereby acknowledges that he, she or it is responsible for making and furnishing such return and statement and agrees to do so and agrees to retain this document for four years following the close of the calendar year during which the closing of the transaction described below occurs. The undersigned further acknowledges that the transferee named below and its counsel are relying on this designation and the fulfillment of the undersigned's obligations hereunder as discharging any and all obligations they might otherwise have under Internal Revenue Code 6045.

The undersigned hereby acknowledges that he, she or it is either the person responsible for closing the transaction, the attorney for the transferee, the attorney for the transferor, the title or escrow company, or the mortgage lender, in each case within the meaning of any applicable regulations under the Internal Revenue Code Section 6045.

Name and Address of Transferor: CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202

Name and Address of Transferee: The Commonwealth of Massachusetts,  
acting by and through the Executive  
Office of Transportation  
Ten Park Plaza  
Boston, MA

Address and Other Information  
Necessary to Identify the Property: See Exhibit A attached hereto

Date: As of \_\_\_\_\_, 2008      DESIGNATED PERSON

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

**EXHIBIT A  
TO  
TAX REPORTING**

**Description of Real Estate**

**EXHIBIT F**  
**Clearance Work Agreement**

**[Note: to be in form as executed contemporaneously with this Agreement]**

## CLEARANCE WORK AGREEMENT

THIS CLEARANCE WORK AGREEMENT (this "Agreement") is made this 10<sup>th</sup> day of October, 2008, by and between The Commonwealth of Massachusetts, acting by and through its Executive Office of Transportation and Public Works ("EOT"), having offices at 10 Park Plaza, Suite 3170, Boston, MA 02116, and CSX Transportation, Inc. ("CSXT"), a Virginia corporation having offices at 500 Water Street, Jacksonville, Florida 32202.

WHEREAS, CSXT and EOT have entered into a Definitive Agreement of even date herewith (the "Definitive Agreement"), pursuant to which, among other things, CSXT agreed to sell and EOT agreed to purchase certain interests of CSXT;

WHEREAS, pursuant to the Definitive Agreement, the parties each agreed to be responsible for performing certain clearance work, including providing a minimum vertical clearance of 21'0", along the Berkshire and Boston Subdivision, Albany Division between MP158.80 and MP 32.70, as more specifically described in Section 1 below (hereinafter referred to as the "Project"), provided, however, that in the event 21'0" is not feasible in some locations, clearance of not less than 20'8" shall be established, subject to mutual agreement based upon the ability to accommodate doublestack trains, taking into account relevant engineering and safety standards;

WHEREAS, EOT's sponsorship of the Project will provide high productivity, low cost transportation for transport of domestic and international cargo to manufacturers and distributors which operate in and through the Commonwealth;

WHEREAS, safety is CSXT's and EOT's first priority for the Project;

WHEREAS, EOT and CSXT have agreed to undertake certain portions of the Project in order to complete all design and construction aspects of the Project; and

WHEREAS, to assist EOT and CSXT in identifying those costs and responsibilities required to undertake the final design and construction activities of the Project, the parties agree to the preparation and execution of this Agreement.

NOW, THEREFORE, in consideration for the agreements and mutual undertakings and covenants made in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, EOT and CSXT hereby agree as follows:

### 1. Allocation and Conduct of Work

1.1 CSXT Work. CSXT shall perform, or cause to be performed, at its sole expense, the work described on Exhibit A for the projects identified as "CSXT Projects" set forth on Exhibit B (the "CSXT Work"). EOT agrees that CSXT's obligation to perform (or cause to be performed) the CSXT Work, shall be subject to CSXT's right to perform (or cause to be performed) the CSXT Work in such manner as, and to provide all such services that, CSXT deems necessary or appropriate (whether or not specified by Exhibit A) to preserve and maintain its property and operations, without impairment or exposure to liability of any kind and, in compliance with all applicable federal, state and local statutes, laws, bylaws, rules and regulations and CSXT's contractual obligations, including, but not limited to, CSXT's existing or proposed third party agreements and collective bargaining agreements. CSXT shall commence the CSXT Work under this

Agreement following the issuance of all applicable federal, state and local permits, approvals and authorizations (the "CSXT Approvals"). CSXT shall use commercially reasonable efforts to obtain the CSXT Approvals at its own cost and expense and shall promptly deliver a copy of any such permit, approval or authorization to BOT. The initiation of any work by CSXT pursuant to this Agreement, including, but not limited to, the issuance of purchase orders or bids for materials or services, shall constitute commencement of work for the purposes of this Section. All work to be performed by CSXT shall be completed no later than August 31, 2012, unless the parties mutually agree to extend such date.

1.2 The BOT Work. BOT shall perform, or cause to be performed, at its sole expense, the work described on Exhibit C for the projects identified as "BOT Projects" on Exhibit B (the "BOT Work") and together with the CSXT Work, the "Clearance Work"), provided, however, that the Pittsfield Bridge shall be governed by Section 4.3.5 of the Definitive Agreement. BOT shall perform (or cause to be performed) the BOT Work, in compliance with all applicable federal state and local statutes, laws, bylaw, rules and regulations. BOT shall commence the BOT Work under this Agreement following the issuance of all applicable federal, state and local permits, approvals and authorizations (the "BOT Approvals"). All work to be performed by BOT shall conclude no later than August 31, 2012, unless the parties mutually agree to extend such date

2. Special Provisions. BOT shall observe and abide by, and shall require its contractors ("Contractors") to observe and abide by the terms, conditions and provisions set forth in Exhibit D to this Agreement (the "Special Provisions"). To the extent that BOT performs the BOT Work itself, BOT shall be deemed a Contractor for purposes of this Agreement.

3. Appropriations. The parties represent to each other that all necessary funding and, in the case of BOT, authorizations, are, or at the time they are needed will be, available sufficient to allow each party to perform its obligations under this Agreement.

4. Obligation to Perform.

4.1 Each party agrees to complete the Clearance Work for which it is responsible in a good and workmanlike manner using materials of a commercially reasonable quality. In the event that a party (the "Non-Performing Party") fails to complete a specific element of its Clearance Work in the manner and by the time provided for in this Agreement (including Exhibit B hereto), the other Party (the "Performing Party") may send a written notice (a "Default Notice") to the Non-Performing Party which notice shall describe in reasonable detail the Non-Performing Party's failure to complete, or failure to meet agreed-to time requirements with respect to the progress of, the specific element of its Clearance Work. In the event that the Non-Performing Party fails to remedy its default within fourteen (14) days after the Performing Party has sent a Default Notice, the Performing Party may, at its election, suspend performance of the Clearance Work for which it is responsible until such time as the Non-Performing Party cures its default.

4.2 If the Non-Performing Party fails to cure its default within sixty (60) days after the Performing Party's having sent a Default Notice, the Performing Party may file an action in any court of competent jurisdiction in accordance with the provisions of Section 13.13 of this Agreement requesting such relief and damages as it may deem appropriate including, without limitation, specific performance and the payment of its reasonable legal fees incurred in connection with enforcing the Non-Performing Party's obligations

to perform the Clearance Work. Nothing contained in the foregoing provisions of this Section 4.2 shall modify, amend or supersede the provisions of Sections 4.3 or 12.3 of the Definitive Agreement.

5. Basements and Licenses.

5.1 Licenses and Permits. Each party shall use its commercially reasonable efforts to acquire all necessary licenses, permits and easements required for completion of its part of the Clearance Work. BOT agrees to use its reasonable efforts, consistent with its statutory and constitutional obligations, to assist CSXT and/or its affiliates in obtaining all permits and approvals from all federal, state, municipal or local governmental bodies, agencies, authorities, departments, commissions, boards and instrumentalities to complete the CSXT Work. CSXT agrees to use its reasonable efforts to assist BOT and/or the Massachusetts Bay Transportation Authority (the "MBTA") in obtaining all permits and approvals from all federal, state, municipal or local governmental bodies, agencies, authorities, departments, commissions, boards and instrumentalities to complete the BOT Work. BOT shall cause MBTA to use its reasonable efforts to assist CSXT and/or its affiliates in obtaining all permits and approvals from all federal, state, municipal or local governmental bodies, agencies, authorities, departments, commissions, boards and instrumentalities to complete the CSXT Work.

5.2 Temporary Construction Licenses. Insofar as CSXT has the right to do so, CSXT hereby grants BOT a nonexclusive license to access and cross CSXT's property, to the extent necessary for the BOT Work (excluding ingress or egress over public grade crossings), along such routes and upon such terms as may be defined in that certain Right of Entry Agreement (the "Right of Entry Agreement") entered into in connection with the Project in the form attached as Exhibit E.

5.3 Easements. Insofar as CSXT has the right to do so, CSXT shall grant, without warranty to BOT, permanent easements for the use and maintenance of any portion of an BOT Project wholly or partly on CSXT property, if any, on terms and conditions and for nominal consideration. Upon request by CSXT, BOT shall furnish to CSXT descriptions and plat plans for the easements.

6. Responsibility for Costs Incurred to Undertake Final Design and Construction Contracts/Activities. Except as may be otherwise specifically provided in Section 4.3.5 of the Definitive Agreement, BOT will assume all cost incurred for the BOT Work, provided, however, Paragraph B of Section X of Exhibit D hereto shall govern the allocation of flagging costs with respect to sites constituting part of the BOT Work. CSXT will assume all costs incurred for the CSXT Work for the sites involving track lowering.

7. Maintenance of Completed Construction. Upon completion of the Project, CSXT will maintain the track and associated facilities within the Project limits and located on CSXT property, to a standard appropriate to its use and in a manner consistent with any operating agreement then in effect between the MBTA and CSXT, so long as such track and associated facilities are owned by, in use by, and not abandoned by CSXT.

8. Insurance. In addition to the insurance that each party requires of its Contractors, each party shall purchase and maintain, or require its Contractors to purchase and maintain, insurance in compliance with the insurance requirements in the Right of Entry Agreement. Neither party nor their respective Contractors shall commence work on the Project until such policy or policies

have been submitted to and approved by the other party, which approval shall not be unreasonably withheld, conditioned or delayed.

9. Indemnification.

9.1 BOT Indemnification Generally. To the maximum extent permitted by applicable law, BOT shall cause its Contractors to indemnify, defend, and hold CSXT and its affiliates harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of CSXT, its affiliates, BOT or its Contractors), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of CSXT, its affiliates, BOT or its Contractors), and environmental damages and any related remediation brought or recovered against CSXT and its affiliates, arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the Contractors, BOT, and their respective agents, employees, invitees, contractors, or its contractors' agents, employees or invitees in the performance of work in connection with the Project or activities incidental thereto, or from their presence on or about CSXT's property. The foregoing indemnification obligation shall not be limited to the insurance coverage required by this Agreement, except to the extent required by law or otherwise expressly provided by this Agreement.

9.1.2 BOT Compliance with Laws. BOT shall comply, and shall require its Contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction and maintenance of the Project. The Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.

9.1.3 CSXT Affiliates. For the purpose of this Section 9, CSXT's affiliates include CSX Corporation and all entities, directly or indirectly, owned or controlled by or under common control of CSXT or CSX Corporation and their respective officers, directors, employees and agents.

9.1.4 BOT Notice of Incidents. BOT and its Contractor shall notify CSXT promptly of any loss, damage, injury or death arising out of or in connection with the BOT Work.

9.1.5 Survival. The provisions of this Section 9 shall survive the termination or expiration of this Agreement.

9.2 CSXT Indemnification Generally. To the maximum extent permitted by applicable law, the CSXT and its contractors shall indemnify, defend, and hold BOT harmless from and against all claims, demands, payments, suits, actions, judgments settlements, and damages of every nature, degree, and kind (including direct, indirect incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of BOT and the MBTA, its affiliates, CSXT or its Contractors), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of BOT, the MBTA, CSXT or its Contractors), and environmental damages and any related remediation

brought or recovered against BOT and its affiliates, arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the Contractors, CSXT, and their respective agents, employees, invitees, contractors, or its contractors' agents, employees or invitees in the performance of work in connection with the Project or activities incidental thereto, or from their presence on or about BOT or the MBTA's property. The foregoing indemnification obligation shall not be limited to the insurance coverage required by this Agreement, except to the extent required by law or otherwise expressly provided by this Agreement.

9.2.1 CSXT Compliance with Laws. CSXT shall comply, and shall require its Contractors to comply, with any federal, state or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction and maintenance of the Project. The Contractors shall indemnify, defend and hold BOT and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.

9.2.2 CSXT Notice of Incidents. CSXT, its Affiliates and its Contractors shall notify BOT promptly of any loss, damage, injury or death arising out of or in connection with the CSXT Work.

9.2.3 Survival. The provision of this Section 9 shall survive the termination or expiration of this Agreement.

10. Capacity. BOT recognizes and acknowledges that the construction and operation of any clearance improvements must not interfere with or impede CSXT's ability to conduct existing and future freight service as well as the ability to maintain its track/s and other facilities.

11. Independent Contractor.

11.1.1 CSXT and Independent Contractors. The parties agree that neither BOT nor its Contractors shall be deemed either agents or independent contractors of CSXT. Except as otherwise provided by this Agreement (including the Exhibits hereto), CSXT shall exercise no control whatsoever the employment, discharge, compensation of, or services rendered by BOT or its Contractors, or the construction practices, procedures, and professional judgment employed by its Contractor to complete the Project. Notwithstanding the foregoing, this Section 11 shall in no way affect the absolute authority of CSXT to prohibit BOT or its Contractors or anyone from entering CSXT's property, or to require the removal of any person from its property, if it determines, in its sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on or about the Project exist.

11.1.2 BOT and Independent Contractors. The parties agree that neither CSXT nor its Contractors shall be deemed either agents or independent contractors of BOT. Except as otherwise provided by this Agreement (including the Exhibits hereto), BOT shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by CSXT or its Contractors, or the construction practices, procedures and professional judgment employed by its Contractor to complete the Project. Notwithstanding the foregoing, this Section 11 shall in no way affect the absolute authority of BOT to prohibit CSXT or its Contractors or anyone from entering BOT's property, or to require the removal of any person from its property, if it determines, in its



sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on or about the Project exist.

12. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall, unless otherwise provided herein, be given or served: (i) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (ii) by overnight delivery using a nationally recognized overnight courier, (iii) by personal delivery, or (iv) by facsimile, evidenced by confirmed receipt. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) business day after such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified between the hours of 8:00 a.m. and 5:00 p.m. of any business day with delivery made after such hours to be deemed received the following business day. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to BOT shall be deemed given by BOT and notices given by counsel to CSXT shall be deemed given by CSXT.

Notices to CSXT shall be sent to:

CSX Transportation, Inc.  
500 Water Street -- J150  
Jacksonville, FL 32202-5184  
Attn: Kim Bongiovanni, Esq.

with copy to:

Peter J. Shultz  
CSX Corporation  
Suite 560 National Place  
1331 Pennsylvania Avenue, N.W.  
Washington DC 20004

Notices to BOT shall be sent to:

Executive Office of Transportation  
Ten Park Plaza  
Boston, MA 02116-3974  
Attn. Secretary

13. Miscellaneous Provisions.

13.1 Rights and Remedies Cumulative; Waiver. Except as expressly provided herein, the rights and remedies of the parties to this Agreement, whether provided by law, by this Agreement, or by the Definitive Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No failure of either party to exercise any right or power under this Agreement or the Definitive Agreement, or to insist upon strict compliance with the provisions of this Agreement, or

the Definitive Agreement, and no custom or practice of either party at variance with this Agreement, or the Definitive Agreement, shall constitute a waiver of such party's right to demand exact and strict compliance by the other party with the terms and conditions of this Agreement or the Definitive Agreement.

**13.2 Severability.** If any term of this Agreement or the application thereof to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and this Agreement shall otherwise remain in full force and effect.

**13.3 Controversy.** In the event of any controversy, claim or dispute between the parties hereto affecting or relating to the purposes or subject matter of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its expenses, including, without limitation, reasonable attorneys' fees and costs.

**13.4 Successors and Assigns.** This Agreement shall inure to, and be binding upon, the parties and their respective successors and assigns. Neither party may assign its rights hereunder without the written consent of the other party.

**13.5 Entirety and Amendments.** This Agreement and the Definitive Agreement embody the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Clearance Work. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

**13.6 Time.** Time is of the essence in the performance of this Agreement.

**13.7 Construction.** This Agreement shall be construed as a whole and in accordance with its fair meaning. The premises hereinbefore stated are incorporated as a part of the Agreement. Captions and organizations are for convenience only and shall not be used in interpreting this Agreement or construing meaning. Whenever the words "including", "include" or "includes" are used in this Agreement, they shall be interpreted in a non-exclusive manner as though the words "without limitation" immediately followed the same. Masculine, feminine, or neuter gender and the singular and the plural number, shall each be considered to include the other whenever the context so requires. If any party consists of more than one person, each such person shall be jointly and severally liable.

**13.8 Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange facsimile counterparts of the signature pages.

**13.9 Prohibition of Third party Beneficiaries.** Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the parties hereto and their respective legal representatives, successors and assigns, any right or benefit under or by reason of this Agreement.

13.10 Publicity. Neither party shall issue any press release or otherwise make a public statement with respect to this Agreement or the transactions contemplated hereby without the prior approval of the other party except as may be required by applicable laws, in which case the parties shall use their best efforts to consult with each other regarding the content of any such press release or statement prior to its release.

13.11 Exhibits. The Exhibits attached hereto are hereby incorporated as integral parts of this Agreement.

13.12 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of Massachusetts and applicable federal law.

13.13 Venue. Any action or proceeding brought hereunder shall be brought exclusively in the United States District Court situate in Boston, Massachusetts, unless such court lacks subject matter jurisdiction in which case any action or proceeding may be brought in any state court situate in Boston, Massachusetts.

13.14 No Recording. This Agreement shall not be recorded by either party.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their respective duly authorized officers as of the date and year first above written.

CSX Transportation, Inc.

By: [Signature]  
Name: JOHN M. GIBSON, JR.  
Title: VP Operations Research and Planning

The Commonwealth of Massachusetts by and through its  
The Executive Office of Transportation and Public Works

By: [Signature]  
Name: Bernard Cohen  
Title: Secretary of Transportation and Public Works

*Signature Page to Clearance Work Agreement*

# 5640830\_v1

**EXHIBIT A**

1. Preparation of Final Design Construction Packages. CSXT will complete the final design of all plans, specifications and contract documents to accomplish CSXT Work at sites identified as requiring track lowering. All engineering and operating requirements of CSXT and BOT will be included and addressed as part of the contract plans, specifications and documents. CSXT reserves the right to utilize the services of a contracted engineering consultant to prepare the final plans, specifications and contract documents and create any required construction packages.
2. Obtaining of Project Approvals/Permits. CSXT, and/or its consultant, will obtain all Project approvals and permits prior to the advertising and award of the construction packages, including approval of the Massachusetts Highway Department.

**EXHIBIT B**

### EOT/MBD Projects

MA Br.#	CSXT Br.#	Town	Roadway	Method
R-6-1	156.70	Richmond	Summit Rd.	Raise Bridge
H-16-14	140.83	Middle	Route 8	Replace Superstructure
C-11-8	123.10	Chicopee	Beddix Dr.	Replace Superstructure
*W-21-8	103.73	West Springfield	Route 20	Replace Superstructure
W-19-6	69.66	West Brookfield	Long Hill Rd.	Active MHD Project (Raise Superstructure)
*S-23-24	62.35	Spencer	Route 49	Raise Bridge
C-6-13	56.88	Charlton	Jones Rd.	Raise Bridge
W-24-7	32.31	Wareham	Route 145	Raise Bridge
*P-10-10	149.27	Randolph	Woodlawn Ave.	Raise Bridge
Thru Bridge				

**\*Designates a project not covered by Chapter 634 of the Acts of 1971; all other are Chapter 634 Projects**

**+ Reference is made to Section 4.3.5 of the Definitive Agreement of even date, as entered into by and between the parties to this Clearance Work Agreement.**

## CSXT Projects

MA Br.#	CSXT Br.#	Town	Roadway	Method
150-23	150-23	MASSACHUSETTS	MASSACHUSETTS	Lower Track

MA Br.#	CSXT Br.#	Town	Roadway	Method
*P-10-12	149.93	Pittsfield	Second St.	Lower Track
R-15-1	115.38	Russell	Main St.	Lower Track
S-14-9	95.23	Shenandoah	Kennedy Ave.	Lower Track
W-35-11	30.44	Wilmington	Old Boston Rd.	Lower Track
B-26-4	66.00	Brockton	Chapin St.	Lower Track
W-44-23	47.30	Worcester	Heard St.	Lower Track

\*Designates a project not covered by Chapter 634 of the Massachusetts Acts of 1971; all other projects are Chapter 634 projects

**EXHIBIT C**

1. Preparation of Final Design Construction Packages. BOT will complete the final design of all plans, specifications and contract documents to accomplish the BOT Work at sites identified as requiring bridge raising, superstructure replacement or are an active Massachusetts Highway Department Project site. All engineering and operating requirements of CSXT and BOT will be included and addressed as part of the contract plans, specifications and documents. BOT reserves the right to utilize the services of a contracted engineering consultant to prepare the final plans, specifications and contract documents and create any required construction packages.
2. Obtaining of Project Approvals/Permits. BOT and/or its consultant, will obtain all Project approvals of CSXT for any construction items impacting CSXT operations, employees or customers.



**EXHIBIT D**

**SPECIAL PROVISIONS**

**I. AUTHORITY OF CSXT ENGINEER**

CSXT's designated representative shall have final authority in all matters affecting the safe maintenance of CSXT operations and CSXT property, and his or her approval shall be obtained by BOT or its Contractor for methods of construction to avoid interference with CSXT operations and CSXT property and all other matters contemplated by the Agreement and these Special Provisions.

**II. INTERFERENCE WITH CSXT OPERATIONS**

A. BOT or its Contractor shall arrange and conduct its work so that there will be no interference with CSXT operations, including train, signal, telephone and telegraphic services, or damage to CSXT's property, or to poles, wires, and other facilities of tenants on CSXT's property or right-of-way. BOT or its Contractor shall store materials so as to prevent trespassers from causing damage to trains, or CSXT property. Whenever BOT Work is likely to affect the operations or safety of trains, the method of doing such work shall first be submitted to the CSXT representative for approval, but such approval shall not relieve BOT or its Contractor from liability in connection with such work.

B. If conditions arising from or in connection with the BOT Work require that immediate and unusual provisions be made to protect train operation or CSXT's property, BOT or its Contractor shall make such provision. If the CSXT representative determines that such provision is insufficient, CSXT may, at the expense of BOT or its Contractor, require or provide such provision as may be deemed necessary, or cause the BOT Work to cease immediately.

**III. NOTICE OF STARTING WORK.** BOT or its Contractor shall not commence any work on, over or abutting CSXT property or rights-of-way until it has complied with the following conditions:

A. Notify CSXT in writing of the date that it intends to commence BOT Work on the Project. Such notice must be received by CSXT at least ten business days in advance of the date BOT or its Contractor proposes to begin BOT Work on CSXT property. The notice must refer to this Agreement by date. If flagging service is required, such notice shall be submitted at least thirty (30) business days in advance of the date scheduled to commence the BOT Work.

B. Obtain authorization from the CSXT Representative to begin the BOT Work on, over or abutting CSXT property, such authorization to include an outline of specific conditions with which it must comply.

C. Obtain from CSXT the names, addresses and telephone numbers of CSXT's personnel who must receive notice under provisions in the Agreement. Where more than one individual is designated, the area of responsibility of each shall be specified.

**IV. CHANGES TO UTILITIES**

- A. No temporary or permanent changes to wire lines or other facilities (other than third party fiber optic cable transmission systems) on CSXT property that are considered necessary to the BOT Work are anticipated. If any such changes are, or become, necessary in the opinion of CSXT or BOT such changes will be covered by appropriate revisions to the plans. BOT or Contractor shall be responsible for arranging for the relocation of the third party fiber optic cable transmission systems, at no cost or expense to CSXT.
- B. Should BOT or Contractor desire any changes in addition to the above, then it shall make separate arrangements with CSXT for such changes to be accomplished at BOT or Contractor's expense.

**V. HAUL ACROSS RAILROAD**

- A. If BOT or Contractor desires access across CSXT property or tracks at other than an existing and open public road crossing in or incident to the BOT Work, BOT or Contractor must first obtain the permission of CSXT and shall execute a license agreement or right of entry satisfactory to CSXT, wherein BOT or Contractor agrees to bear all costs and liabilities related to such access.
- B. BOT and Contractor shall not cross CSXT's property and tracks with vehicles or equipment of any kind or character, except at such crossing or crossings as may be permitted pursuant to this section.

**VI. COOPERATION AND DELAYS**

- A. BOT may not charge any costs or submit any claims against CSXT for hindrance or delay caused by railroad traffic; work done by CSXT or other delay incident to or necessary for safe maintenance of railroad traffic; or for any delays due to compliance with these Special Provisions.
- B. BOT and Contractor understand and agree that CSXT does not assume any responsibility for work performed by others in connection the BOT Work. BOT and Contractor further understand and agree that they shall have no claim whatsoever against CSXT for any inconvenience, delay or additional cost incurred by BOT or Contractor on account of operations by others.

**VII. STORAGE OF MATERIALS AND EQUIPMENT**

BOT and Contractor shall not store their materials or equipment on CSXT's property or where they may potentially interfere with CSXT's operations, unless BOT or Contractor has received CSXT representative's prior written permission. BOT and Contractor understand and agree that CSXT will not be liable for any damage to such materials and equipment from any cause and that CSXT may move, or require BOT or Contractor to move, such material and equipment at BOT's or Contractor's sole expense. To minimize the possibility of damage to the railroad tracks resulting from the unauthorized use of equipment, all grading or other construction equipment that is left parked near the tracks unattended by watchmen shall be immobilized to the extent feasible so that it cannot be moved by unauthorized persons.

## **VIII. CONSTRUCTION PROCEDURES**

### **A. General**

1. Construction work on CSXT property shall be subject to CSXT's inspection and approval.
2. Construction work on CSXT property shall be in accord with CSXT's Right of Entry Agreement and these Special Provisions.
3. Commonwealth shall ensure that Contractor executes the Right of Entry Agreement, which will, among other things, encompass the terms and rules of the CSXT Safe Way manual, which EOT and Contractor shall be required to obtain from CSXT, and that Contractor observes any other instructions furnished by CSXT or CSXT's representative.

### **B. Blasting**

1. EOT or Contractor shall obtain CSXT representative's prior written approval for use of explosives on or adjacent to CSXT property. If permission for use of explosives is granted, EOT or Contractor must comply with the following:
  - a. Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of EOT or Contractor.
  - b. Electric detonating fuses shall not be used because of the possibility of premature explosions resulting from operation of two-way train radios.
  - c. No blasting shall be done without the presence of an authorized representative of CSXT. At least ten (10) days' advance notice to CSXT representative is required to arrange for the presence of an authorized CSXT representative and any flagging that CSXT may require.
  - d. EOT or Contractor must have at the Project site adequate equipment, labor and materials, and allow sufficient time, to (i) clean up (at EOT's expense) debris resulting from the blasting without any delay to trains; and (ii) correct (at EOT's expense) any track misalignment or other damage to CSXT's property resulting from the blasting, as directed by CSXT representative, without delay to trains. If EOT's or Contractor's actions result in any loss, including without limitation, personal injury or property damage, or delay of any trains, including Amtrak passenger trains, EOT shall bear the entire cost thereof and shall indemnify and hold CSXT harmless from and against any and all liability arising therefrom.

e. BOT and Contractor shall not store explosives on CSXT property.

2. CSXT's representative will:

- a. Determine the approximate location of trains and advise BOT or Contractor of the approximate amount of time available for the blasting operation and clean-up.
- b. Have the authority to order discontinuance of blasting if, in his or her opinion, blasting is too hazardous or is not in accord with these Special Provisions.

IX. MAINTENANCE OF DITCHES ADJACENT TO CSXT TRACKS

BOT or Contractor shall maintain all ditches and drainage structures free of silt or other obstructions that may result from their operations. BOT or Contractor shall provide erosion control measures during the BOT Work and use methods that accord with applicable state standard specifications for road and bridge construction, including either (1) silt fence; (2) hay or straw barrier; (3) berm or temporary ditches; (4) sediment basin; (5) aggregate checks; and (6) channel lining. All such maintenance and repair of damages due to BOT's or Contractor's operations shall be performed at BOT's expense.

X. FLAGGING / INSPECTION SERVICE

- A. CSXT has sole authority to determine the need for flagging required to protect its operations and property. In general, flagging protection will be required whenever BOT or Contractor or their equipment are, or are likely to be, working within fifty (50) feet of live track or other track clearances specified by CSXT, or over tracks.
- B. Except as set forth in Section 4.3.5 of the Definitive Agreement of even date between the parties, BOT shall reimburse CSXT directly for all costs of flagging that is required on account of construction within, over or abutting CSXT property shown on the plans, or that is covered by an approved plan revision, supplemental agreement or change order, except for the costs of flag protection associated with those bridges transferred to the Commonwealth pursuant to Chapter 634 of the Acts of 1971 of the Commonwealth of Massachusetts, as amended. CSXT shall, to the extent required by said Chapter 634, assume the costs of flag protection for BOT Work undertaken for those bridges that are subject to said Chapter 634.
- C. BOT or Contractor shall give a minimum of ten (10) days' advance notice to CSXT representative for anticipated need for flagging service. No work shall be undertaken until the flag person(s) is/are at the job site. If it is necessary for CSXT to advertise a flagging job for bid, it may take up to ninety (90) days to obtain this service, and CSXT shall not be liable for the cost of delays attributable to obtaining such service.
- D. CSXT shall have the right to assign an individual to the site of the Project where the BOT Work will be performed to perform inspection service whenever, in the

opinion of CSXT representative, such inspection may be necessary. BOT shall reimburse CSXT for the costs incurred by CSXT for such inspection service. Inspection service shall not relieve BOT or Contractor from liability for the BOT Work.

- E. CSXT shall render invoices for, and BOT shall pay for, the actual pay rate of the flagpersons and inspectors used. If the rate of pay that is to be used for inspector or flagging service is changed before the BOT Work is started or during the progress of the work, whether by law or agreement between CSXT and its employees, or if the tax rates on labor are changed, bills will be rendered by CSXT and paid by BOT using the new rates. BOT and Contractor shall perform their operations that require flagging protection or inspection service in such a manner and sequence that the cost of such will be as economical as possible.

**XI. UTILITY FACILITIES ON CSXT PROPERTY**

BOT shall arrange, upon approval from CSXT, to have any utility facilities on or over CSXT property changed as may be necessary to provide clearances for the proposed trackage for the performance of the BOT Work.

**XII. CLEAN-UP**

BOT or Contractor, upon completion of the BOT Work, shall remove from CSXT's property any temporary grade crossings, any temporary erosion control measures used to control drainage, all machinery, equipment, surplus materials, falsework, rubbish, or temporary buildings belonging to BOT or Contractor. BOT or Contractor, upon completion of the BOT Work, shall leave CSXT property in neat condition, satisfactory to CSXT representative.

**XIII. FAILURE TO COMPLY**

If BOT or Contractor violate or fail to comply with any of the requirements of these Special Provisions, then in addition to any remedies provided in the Agreement, at law, or in equity, CSXT may (a) require BOT and/or Contractor to vacate CSXT property; and (b) withhold monies due BOT and/or Contractor; (c) require BOT to withhold monies due Contractor; or (d) cure such failure and BOT shall reimburse CSXT for the cost of curing such failure.

Execution Copy

**Exhibit E**  
**Right of Entry**

# 5642955\_v5

CSX Transportation, Inc.

Temporary Right of Entry Agreement

THIS AGREEMENT, made and effective as of October 10, 2008, by and among CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202 ("CSXT"), The Commonwealth of Massachusetts, acting by and through its Executive Office of Transportation and Public Works ("BOT"), whose mailing address is Ten Park Plaza, Boston, MA 02116-3974 and [CONTRACTOR], a corporation organized under the laws of the State of Massachusetts, whose mailing address is \_\_\_\_\_ ("Contractor," and together with BOT, "Licensee").

WITNESSETH:

WHEREAS, Licensee has requested permission to enter CSXT's property located on (i) the Boston Main Line between Boston and the New York State line (the "Boston Main Line"); (ii) the Grand Junction Branch between Boston and Chelsea, Mile Post MP 00 to Mile Post MP 7.87 (the "Grand Junction Branch"); (iii) the New Bedford Secondary Line, from the point of CSXT-owned property at Cotely (approximately MP 13.40) to the end of CSX-owned property at approximately MP 31.80, and that portion of the North Dartmouth Industrial Track owned by CSXT (MP 0.0 to MP. 6.0), together the Fall River Secondary Line, from M.P. 0.0 to the end of the CSXT-owned property within the Commonwealth at approximately MP 14.20 (the "New Bedford Fall River Rail Properties" and the Boston Terminal Running Track, Mile Post MP 00 to Mile Post MP 2.25, including the 1<sup>st</sup> Street Yard (the "Boston Terminal Running Track," collectively, the "Property"), for the purpose of performing (A) an inspection of the track and bridges on the Boston Main Line, Grand Junction Branch and Boston Terminal Running Track, (B) a visual inspection only of the environmental conditions on the Property, (C) the inspection of a signal bungalow on the Boston Main Line, and (D) the BOT Work, as defined in that certain Clearance Work Agreement of even date herewith between BOT and CSXT, all of which is related to the proposed Boston Commuter Rail project, and all of which shall be performed as more particularly described in Exhibit A, attached hereto and made a part hereof (the "Project"); and

WHEREAS, CSXT is willing to grant to Licensee the limited right and permission to enter upon the Property for the limited purpose of performing the Project,

NOW THEREFORE, CSXT hereby grants to Licensee the right and permission to enter upon the Property for the purpose of performing said Project, subject to the terms and conditions set forth below:

1. **PROJECT:** The Project shall be performed at the entire cost and expense of Licensee, in accordance with good and sound engineering practices, to the satisfaction of CSXT's Division Engineer, or his or her duly authorized representative ("Division Engineer"), and in a manner to avoid accidents, damages, and unnecessary delays to or interference with train traffic of CSXT. Prior to entry, Licensee shall notify the Division Engineer's representative and arrange for flagging protection in accordance with Sections 5 and 7 of this Agreement. Licensee shall not dig in the ballast line or within the tracks loading influence area, or otherwise disturb the track structure. One on-site supervisor of Licensee and Licensee's employees, agents, contractors and other representatives (collectively, "Agents") shall maintain in his or her possession a copy of this Agreement at all times during Licensee's occupation of the Property.

**2. INDEMNITY:**

2.1. To the extent permitted by law, Licensee hereby assumes risk of, and Contractor agrees to indemnify, defend, protect and save CSXT and CSXT's Affiliates harmless with respect to any and all reasonable attorneys' fees, liability, claims, demands, payments, suits, actions, recoveries, penalties, costs, legal expenses, judgments, settlements and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages); for:

2.1.1 personal injury, including, but not limited to bodily injury to or death of any person or persons whomsoever, including the agents, servants, Affiliates or employees of the parties;

2.1.2 the loss or damage to any property whatsoever, including property owned or in the care, custody or control of the parties hereto or their respective Affiliates;

2.1.3 any environmental damage caused by Licensee and any related remediation brought or recovered against CSXT or any of its Affiliates in connection therewith; and

2.1.4 any and all other losses or damages;

arising directly or indirectly from the presence of Licensee or its Agents on or about the Property, whether or not attributable in whole or part to the negligence, gross negligence, or intentional misconduct of CSXT or its Affiliates. Notwithstanding the foregoing, in no event shall Licensee be responsible under this Section 2 for reasonable attorneys' fees, liability, claims, demands, payments, suits, actions, recoveries, penalties, costs, legal expenses, judgments, settlements and damages of any nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages) arising out of conditions disclosed by Licensee's activities hereunder but not caused by Licensee. In the event that any claim is made against CSXT for which Contractor is responsible hereunder, CSXT shall endeavor to notify Contractor in writing within five (5) days after CSXT has received notice of such claim and Contractor shall have the opportunity to defend such claim with counsel reasonably acceptable to CSXT, provided, however, that failure to provide notice within such time shall not invalidate CSXT's rights hereunder.

2.2. The parties waive any and all right or opportunity to contest the enforceability of this Section and agree that, in the event this Section, or any part of this Section, is found unenforceable by the final, unappealable judgment of a court of competent jurisdiction, this Section shall be construed so as to be enforceable to the maximum extent permitted by applicable law.

2.2.1 Licensee shall comply with any federal, state, or local laws, statutes, codes, ordinances, rules and regulations applicable to its presence or performance of any activity on the Property and Contractor agrees to indemnify, defend, and hold CSXT and its Affiliates harmless with respect to any fines, penalties, liabilities, or other consequences for its failure to so comply.

2.2.2 For the purpose of this Agreement, the term "Affiliates" includes all entities, directly or indirectly owned or controlled by, or under common control of a party or its respective officers, directors, employees and agents, and in the case of



CSXT, includes CSX Corporation, CSXT and their Affiliates and their respective officers, directors, employees and agents.

**2.2.3 The provisions of this Section shall survive the termination or expiration of this Agreement.**

3. **GENERAL LIABILITY INSURANCE:** Licensee shall cause Contractor to procure and maintain, at its expense: (i) statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than \$1,000,000.00, which insurance must contain a waiver of subrogation against CSXT and its Affiliates; (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than \$3,000,000.00 in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement; (iii) business automobile liability insurance with available limits of not less than \$500,000 combined single limit for bodily injury and/or property damage per occurrence; and (iv) such other insurance as CSXT may reasonably require. Upon request, Contractor shall provide CSXT with a copy of Contractor's applicable insurance policies. A policy endorsement naming CSXT, and/or its designee, as an additional insured and specifying such coverage shall be furnished to CSXT prior to the execution of this Agreement, and the required coverage will be kept in force until all of Licensee's obligations under this Agreement have been fully discharged and fulfilled, or until Licensee shall have been specifically released by a written instrument signed by an authorized officer of CSXT, which release CSXT agrees not to unreasonably withhold, condition or delay. Contractor shall also provide CSXT with a copy of the insurance policies. The insurance policies shall provide that the insurance carrier must give CSXT notice at least thirty (30) days in advance of cancellation of coverage, of any change in coverage, or of cancellation of the policy. Notwithstanding any provisions of this Section, the liability assumed by Licensee shall not be limited to the required insurance coverage.
4. **RAILROAD PROTECTIVE LIABILITY INSURANCE:** Licensee shall cause Contractor to procure and maintain, at its expense, the Railroad Protective Liability Insurance described in Exhibit B to this Agreement.
5. **PRIOR NOTIFICATION:** Licensee or Licensee's Agents shall notify CSXT's Roadmaster at least ten (10) business days prior to requiring entry on the Property and shall abide by the instructions of the Division Engineer, or his or her authorized representative. The Division Engineer can be contacted at Albany Division, One Bell Crossing Road, Selkirk, NY 12158.
6. **CLEARANCES:** Neither Licensee nor Agents shall perform any Project or place or operate any equipment of Licensee or Agents at a distance closer than fifty (50) feet from the center of any track, without the prior approval of the Division Engineer. The Division Engineer may require protective services or such other services as deemed necessary or appropriate. Equipment shall be moved across CSXT's track(s) only at a public crossing unless prior arrangements have been made with the Division Engineer and a Private Crossing Agreement is fully executed and in place. Licensee and Agents shall take all precautions necessary to avoid interference with or damage to CSXT's property and signal and communication facilities during their performance of the Project.
7. **PROTECTIVE SERVICES:** If protective services, such as flagging protection, are required by CSXT, Licensee shall make arrangements with the Division Engineer to furnish such personnel, flagman or watchman, that in the Division Engineer's option may be necessary to protect the facilities and traffic of CSXT during the performance of the Project. Licensee shall pay for the reasonable cost of such services, except for the cost of flag protection which is otherwise

required to be paid by CSXT, pursuant to the provisions of Chapter 634 of the Acts of 1971 of the Commonwealth of Massachusetts, as amended.

8. **PAYMENT FOR PROTECTIVE SERVICES:** Payment shall be made by Licensee in accordance with the following designed option:
- ( ) **Option 1:** Licensee shall make an advance deposit of funds based on an estimate of the cost of protective or other services as determined by CSXT. The cost for CSXT's services shall then be assessed by CSXT against this advance deposit. Upon completion of the Project, any unused funding will be returned to Licensee. If CSXT's costs exceed the advance deposit(s), a request will be made to Licensee for additional funds or an invoice will be issued to Licensee for final payment. Licensee shall remit payment to CSXT within thirty (30) days of receipt of either a request for additional funds or an invoice.
  - (X) **Option 2:** Licensee shall promptly reimburse CSXT for the cost of protective or other services on an as-incurred basis upon receipt of bill(s) therefor.
9. **ENVIRONMENTAL:** [Other than the visual inspection of the Property described in the Project description in Exhibit A,] this Agreement does not include, and expressly excludes, the performance of any site investigation activities designed to determine environmental conditions on, about or beneath the Property. Precluded activities include performing soil borings for purposes other than geotechnical investigation, obtaining soil, sediment, groundwater and surface water samples, and conducting field or laboratory analyses of any soil, sediment, groundwater or surface water samples obtained from CSXT property to identify chemical composition or environmental condition. *If any type of environmental investigation is desired, a separate right of entry agreement issued through CSXT's Environmental Department must be secured.*
10. **CLAIMS:** Licensee shall, or shall require Agents, to promptly notify the Division Engineer of any loss, damage, injury or death arising out of or in connection with the Project.
11. **REMEDICATION:** It is understood and agreed that, upon completion of the Project, the Property shall be left in a condition satisfactory to Division Engineer or his or her duly authorized representative and as near as is reasonably practicable to its original condition considering that CSXT has agreed that Licensee can conduct the Project.
12. **SAFETY:**
- 12.1. All personnel entering the Property must comply with CSXT safety rules and requirements to include, without exception, the wearing of hard hats and approved safety shoes and safety glasses with side shields. Anyone not in compliance with these rules and regulations will be asked to leave the Property.
  - 12.2. Before performing any work authorized by this Agreement, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s) and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (state, federal or local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the

Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b), et al.), and State "One Call" - "Call Before You Dig" requirements.

13. **TERM:** This Agreement and the permission conferred and the license granted by it does not constitute a grant of permanent easement and shall terminate upon completion of the Project or at midnight, August 31, 2012, whichever occurs first, unless extended in writing by CSXT. In the event Licensee fails to comply with terms and provisions of this Agreement, Licensee agrees to pay and agrees that CSXT shall be entitled to recover reasonable costs and expenses incurred by CSXT, including legal fees and expenses, to enforce the terms of this Agreement.
14. **SEVERABILITY:** The parties agree that if any part, term or provision of the Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable. If any provision or any part of a provision of the Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable law, ordinance, rule or regulation, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.
15. **ENTIRE AGREEMENT:** This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of all parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter.
16. **NOTICES:** All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered; upon personal delivery, upon the expiration of three (3) business days following mailing by U.S. first class mail, or upon the next business day following mailing by a nationally recognized overnight carrier as follows:

To BOT:

Executive Office of Transportation  
Ten Park Plaza  
Boston, MA 02116-3974  
Attn: Secretary

and a courtesy copy to:

Foley Hoag LLP  
155 Seaport Boulevard  
Boston, Massachusetts 02210  
Attn: Jacob N. Polatin, Esq.

To Contractor:

To CSXT:

CSX Transportation, Inc.  
c/o Contract Administration  
500 Water Street, J180  
Jacksonville, FL 32202

or at such other addresses as any party may designate by delivery of prior notice to the other parties.

17. **TERMINATION:** CSXT shall have the right at any time and at its sole discretion to terminate this Agreement upon notice to Licensee.
18. **WAIVER:** If any party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of another party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.
19. **GOVERNING LAW; VENUE:** This Agreement shall be governed by and construed under applicable federal law and then under the laws of the Commonwealth of Massachusetts, without regard to the choice of law provisions thereof. Venue for any action arising from, or brought to enforce, this Agreement, shall vest exclusively in the state or federal courts located in Suffolk County, Massachusetts, and the parties agree to submit to personal jurisdiction of any state or federal court located in Suffolk County, Massachusetts.
20. **NO ASSIGNMENT:** Notwithstanding anything to the contrary contained in this Agreement, Licensee shall not permit Agents to enter the Property without first requiring Agents to agree in writing to comply with all of the terms of this Agreement. Notwithstanding the foregoing, Licensee shall continue to be responsible for insuring that Agents comply with all of the terms and conditions of this Agreement and Contractor shall indemnify and hold CSXT harmless for any damages described in Section 2 above caused in whole or in part by any such subcontractor. Assignment of this Agreement to any party shall not be permitted except upon the prior written consent of CSXT, which consent may be granted or withheld at CSXT's sole discretion. This Agreement shall be binding upon the parties and their respective successors and permitted assigns.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the effective date of this Agreement.

Witness for CSXT:

\_\_\_\_\_

Approval as to Form

\_\_\_\_\_  
General Counsel

Witness for EOT:

\_\_\_\_\_

Witness for Contractor:

\_\_\_\_\_

CSX TRANSPORTATION, INC.

By: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_

Print/Type Title: \_\_\_\_\_

THE COMMONWEALTH OF  
MASSACHUSETTS ACTING BY AND  
THROUGH ITS EXECUTIVE OFFICE OF  
TRANSPORTATION AND PUBLIC WORKS

By: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_

Print/Type Title: \_\_\_\_\_

[CONTRACTOR]

By: \_\_\_\_\_

Who, by the execution hereof, affirms that he/she  
has the authority to do so and to bind the Licensee  
to the terms and conditions of this Agreement.

Print/Type Name: \_\_\_\_\_

Print/Type Title: \_\_\_\_\_

**EXHIBIT A**

**Project Description**

**[subject to CSXT approval]**

**[Project Description to be provided by EOT/Licensee and to address the EOT Work]**

**[please include, at a minimum, not a limitation, details of the scope, start date, duration, field staff, equipment, flagging requirements and safety precautions to be taken for the Projects]**

## **EXHIBIT B**

### **Railroad Protective Liability Insurance**

**[Subject to CSXT Approval]**

**Evidence required by CSX Transportation, Inc.**

**Licensee shall cause Contractor to furnish Railroad Protective Insurance to protect CSX Transportation, Inc. in connection with operations to be performed on or adjacent to CSX Transportation's right of way. These are our specifications for proper evidence of insurance:**

- 1. The Insurer must be financially stable and rated A- or better in Bests Insurance Reports.**
- 2. The policy must be written using the ISO/RIMA Form of Railroad Protective Insurance - Insurance Services Office (ISO) Form CG 00 35.**
- 3. Named Insured and Address:**

**CSX Transportation, Inc.  
Law Department - Insurance, J 150  
500 Water Street  
Jacksonville, FL 32202**
- 4. Limits of Liability:**

**\$5,000,000 per occurrence, \$10,000,000 annual aggregate are required.**
- 5. Name and Address of Contractor and each subcontractor must be shown on the Declarations page.**
- 6. Name and Address of the Project Sponsor must be shown on the Declarations page.**
- 7. Description of operations must appear on the Declarations page and must match the project description, including project or contract identification numbers.**
- 8. Authorized endorsements:**
  - A. Must**
    - 1) Pollution Exclusion Amendment - CG 28 31  
(Not required with CG 00 35 01 96 and newer versions)**
    - 2) Delete Common Policy Conditions - Section E. Premiums**

**B. Acceptable**

- 1) Broad Form Nuclear Exclusion - IL 00 21
- 2) 30-day Advance Notice of Non-renewal
- 3) Required State Cancellation Endorsement
- 4) Quick Reference or Index - CL/IL 240

**C. Unacceptable**

- 1) Any Pollution Exclusion Endorsement except CG 28 31
- 2) Any Punitive or Exemplary Damages Exclusion
- 3) Any endorsement not named in A or B
- 4) Any type of deductible policy

**You must submit the original policy for our approval and filing prior to the commencement of construction or demolition operations.**

**Walter D. Tyler, CPCU, ARM**  
500 Water Street  
Jacksonville, FL 32202  
904-366-5090  
904-245-2203 Fax  
[Walter\\_Tyler@csx.com](mailto:Walter_Tyler@csx.com)

**# 4103254\_v7**



**Appendix B**  
**Summary of Scope of the Clearance Work**

**EOT/MHD Projects**

MA Br.#	CSXT Br.#	Town	Roadway	Method
R-6-2	157.55	Richmond	Steepy Hollow Rd.	Active MHD Project (Replace Superstructure)
R-6-1	156.70	Richmond	Summit Rd.	Raise Bridge
H-16-13	142.02	Hinsdale	Bridge St.	Replace Superstructure
H-16-14	140.85	Hinsdale	Route 8	Replace Superstructure
C-11-2	127.22	Chester	Middlefield Rd.	Raise Bridge
C-11-8	125.10	Chester	Bendix Dr.	Replace Superstructure
H-27-6	119.28	Huntington	Route 112	Replace One Span
*W-21-8	103.75	West Springfield	Route 20	Replace Superstructure
W-19-15	70.66	West Brookfield	Route 67	Raise Bridge
W-19-6	69.66	West Brookfield	Long Hill Rd.	Active MHD Project (Raise Superstructure)
B-26-3	66.94	Brookfield	Route 148	Replace Superstructure
*S-23-24	62.35	Spencer	Route 49	Raise Bridge
C-6-14	57.50	Charlton	Route 31	Raise Bridge
C-6-13	56.98	Charlton	Jones Rd.	Raise Bridge
*W-44-22	47.70	Worcester	James St.	Raise Bridge
W-24-7	32.71	Westborough	Route 135	Raise Bridge +
*P-10-10	149.27	Pittsfield	Woodlawn Ave.	Raise Bridge +
Total Bridges:				
17				

**\*Designates a project not covered by Chapter 634 of the Acts of 1971; all other are Chapter 634 Projects**

**+ Reference is made to Section 4.3.5 of this Agreement**

### CSXT Projects

MA Br.#	CSXT Br.#	Town	Roadway	Method
R-6-3	158.80	Richmond	Route 41	Lower Track
P-10-14	150.25	Pittsfield	North St.	Lower Track
P-10-13	150.09	Pittsfield	First St.	Lower Track
*P-10-12	149.93	Pittsfield	Second St.	Lower Track
R-13-1	115.38	Russell	Main St.	Lower Track
S-24-16	97.48	Springfield	Armory St.	Lower Track
*S-24-91	95.23	Springfield	Roosevelt Ave.	Lower Track
S-24-18	94.00	Springfield	Berkshire Ave.	Lower Track
W-35-11	90.74	Wilbraham	Old Boston Rd.	Lower Track
W-7-4	74.84	Warren	South St.	Lower Track
B-26-4	66.00	Brookfield	Quaboag St.	Lower Track
C-6-11	56.26	Charlton	Gould Rd.	Lower Track
W-44-23	47.30	Worcester	Heard St.	Lower Track
W-44-25	46.23	Worcester	Cambridge St.	Lower Track
Total Bridges: 14				

\*Designates a project not covered by Chapter 634 of the Massachusetts Acts of 1971; all other projects are Chapter 634 projects

# EXHIBIT G

## Additional MBTA Trains

### MBTA Schedules including Amtrak - Boston to Albany-Rensselaer

EFFECTIVE October 27, 2008

WEEKDAY SCHEDULE - MONDAY THROUGH FRIDAY

#### WESTBOUND

READ DOWN	MP	0400	0415	0430	0445	0500	0515	0530	0545	0600	0615	0630	0645	0700	0715	0730	0745	0800	0815	0830	0845	0900	0915	0930	0945	1000	1015	1030	1045	1100	1115	1130	1145	1200	1215	1230	1245	1300	1315	1330	1345	1400	1415	1430	1445	1500	1515	1530	1545	1600	1615	1630	1645	1700	1715	1730	1745	1800	1815	1830	1845	1900	1915	1930	1945	2000	2015	2030	2045	2100	2115	2130	2145	2200	2215	2230	2245	2300	2315	2330	2345	2400	2415	2430	2445	2500	2515	2530	2545	2600	2615	2630	2645	2700	2715	2730	2745	2800	2815	2830	2845	2900	2915	2930	2945	3000	3015	3030	3045	3100	3115	3130	3145	3200	3215	3230	3245	3300	3315	3330	3345	3400	3415	3430	3445	3500	3515	3530	3545	3600	3615	3630	3645	3700	3715	3730	3745	3800	3815	3830	3845	3900	3915	3930	3945	4000	4015	4030	4045	4100	4115	4130	4145	4200	4215	4230	4245	4300	4315	4330	4345	4400	4415	4430	4445	4500	4515	4530	4545	4600	4615	4630	4645	4700	4715	4730	4745	4800	4815	4830	4845	4900	4915	4930	4945	5000	5015	5030	5045	5100	5115	5130	5145	5200	5215	5230	5245	5300	5315	5330	5345	5400	5415	5430	5445	5500	5515	5530	5545	5600	5615	5630	5645	5700	5715	5730	5745	5800	5815	5830	5845	5900	5915	5930	5945	6000	6015	6030	6045	6100	6115	6130	6145	6200	6215	6230	6245	6300	6315	6330	6345	6400	6415	6430	6445	6500	6515	6530	6545	6600	6615	6630	6645	6700	6715	6730	6745	6800	6815	6830	6845	6900	6915	6930	6945	7000	7015	7030	7045	7100	7115	7130	7145	7200	7215	7230	7245	7300	7315	7330	7345	7400	7415	7430	7445	7500	7515	7530	7545	7600	7615	7630	7645	7700	7715	7730	7745	7800	7815	7830	7845	7900	7915	7930	7945	8000	8015	8030	8045	8100	8115	8130	8145	8200	8215	8230	8245	8300	8315	8330	8345	8400	8415	8430	8445	8500	8515	8530	8545	8600	8615	8630	8645	8700	8715	8730	8745	8800	8815	8830	8845	8900	8915	8930	8945	9000	9015	9030	9045	9100	9115	9130	9145	9200	9215	9230	9245	9300	9315	9330	9345	9400	9415	9430	9445	9500	9515	9530	9545	9600	9615	9630	9645	9700	9715	9730	9745	9800	9815	9830	9845	9900	9915	9930	9945	10000	10015	10030	10045	10100	10115	10130	10145	10200	10215	10230	10245	10300	10315	10330	10345	10400	10415	10430	10445	10500	10515	10530	10545	10600	10615	10630	10645	10700	10715	10730	10745	10800	10815	10830	10845	10900	10915	10930	10945	11000	11015	11030	11045	11100	11115	11130	11145	11200	11215	11230	11245	11300	11315	11330	11345	11400	11415	11430	11445	11500	11515	11530	11545	11600	11615	11630	11645	11700	11715	11730	11745	11800	11815	11830	11845	11900	11915	11930	11945	12000	12015	12030	12045	12100	12115	12130	12145	12200	12215	12230	12245	12300	12315	12330	12345	12400	12415	12430	12445	12500	12515	12530	12545	12600	12615	12630	12645	12700	12715	12730	12745	12800	12815	12830	12845	12900	12915	12930	12945	13000	13015	13030	13045	13100	13115	13130	13145	13200	13215	13230	13245	13300	13315	13330	13345	13400	13415	13430	13445	13500	13515	13530	13545	13600	13615	13630	13645	13700	13715	13730	13745	13800	13815	13830	13845	13900	13915	13930	13945	14000	14015	14030	14045	14100	14115	14130	14145	14200	14215	14230	14245	14300	14315	14330	14345	14400	14415	14430	14445	14500	14515	14530	14545	14600	14615	14630	14645	14700	14715	14730	14745	14800	14815	14830	14845	14900	14915	14930	14945	15000	15015	15030	15045	15100	15115	15130	15145	15200	15215	15230	15245	15300	15315	15330	15345	15400	15415	15430	15445	15500	15515	15530	15545	15600	15615	15630	15645	15700	15715	15730	15745	15800	15815	15830	15845	15900	15915	15930	15945	16000	16015	16030	16045	16100	16115	16130	16145	16200	16215	16230	16245	16300	16315	16330	16345	16400	16415	16430	16445	16500	16515	16530	16545	16600	16615	16630	16645	16700	16715	16730	16745	16800	16815	16830	16845	16900	16915	16930	16945	17000	17015	17030	17045	17100	17115	17130	17145	17200	17215	17230	17245	17300	17315	17330	17345	17400	17415	17430	17445	17500	17515	17530	17545	17600	17615	17630	17645	17700	17715	17730	17745	17800	17815	17830	17845	17900	17915	17930	17945	18000	18015	18030	18045	18100	18115	18130	18145	18200	18215	18230	18245	18300	18315	18330	18345	18400	18415	18430	18445	18500	18515	18530	18545	18600	18615	18630	18645	18700	18715	18730	18745	18800	18815	18830	18845	18900	18915	18930	18945	19000	19015	19030	19045	19100	19115	19130	19145	19200	19215	19230	19245	19300	19315	19330	19345	19400	19415	19430	19445	19500	19515	19530	19545	19600	19615	19630	19645	19700	19715	19730	19745	19800	19815	19830	19845	19900	19915	19930	19945	20000	20015	20030	20045	20100	20115	20130	20145	20200	20215	20230	20245	20300	20315	20330	20345	20400	20415	20430	20445	20500	20515	20530	20545	20600	20615	20630	20645	20700	20715	20730	20745	20800	20815	20830	20845	20900	20915	20930	20945	21000	21015	21030	21045	21100	21115	21130	21145	21200	21215	21230	21245	21300	21315	21330	21345	21400	21415	21430	21445	21500	21515	21530	21545	21600	21615	21630	21645	21700	21715	21730	21745	21800	21815	21830	21845	21900	21915	21930	21945	22000	22015	22030	22045	22100	22115	22130	22145	22200	22215	22230	22245	22300	22315	22330	22345	22400	22415	22430	22445	22500	22515	22530	22545	22600	22615	22630	22645	22700	22715	22730	22745	22800	22815	22830	22845	22900	22915	22930	22945	23000	23015	23030	23045	23100	23115	23130	23145	23200	23215	23230	23245	23300	23315	23330	23345	23400	23415	23430	23445	23500	23515	23530	23545	23600	23615	23630	23645	23700	23715	23730	23745	23800	23815	23830	23845	23900	23915	23930	23945	24000	24015	24030	24045	24100	24115	24130	24145	24200	24215	24230	24245	24300	24315	24330	24345	24400	24415	24430	24445	24500	24515	24530	24545	24600	24615	24630	24645	24700	24715	24730	24745	24800	24815	24830	24845	24900	24915	24930	24945	25000	25015	25030	25045	25100	25115	25130	25145	25200	25215	25230	25245	25300	25315	25330	25345	25400	25415	25430	25445	25500	25515	25530	25545	25600	25615	25630	25645	25700	25715	25730	25745	25800	25815	25830	25845	25900	25915	25930	25945	26000	26015	26030	26045	26100	26115	26130	26145	26200	26215	26230	26245	26300	26315	26330	26345	26400	26415	26430	26445	26500	26515	26530	26545	26600	26615	26630	26645	26700	26715	26730	26745	26800	26815	26830	26845	26900	26915	26930	26945	27000	27015	27030	27045	27100	27115	27130	27145	27200	27215	27230	27245	27300	27315	27330	27345	27400	27415	27430	27445	27500	27515	27530	27545	27600	27615	27630	27645	27700	27715	27730	27745	27800	27815	27830	27845	27900	27915	27930	27945	28000	28015	28030	28045	28100	28115	28130	28145	28200	28215	28230	28245	28300	28315	28330	28345	28400	28415	28430	28445	28500	28515	28530	28545	28600	28615	28630	28645	28700	28715	28730	28745	28800	28815	28830	28845	28900	28915	28930	28945	29000	29015	29030	29045	29100	29115	29130	29145	29200	29215	29230	29245	29300	29315	29330	29345	29400	29415	29430	29445	29500	29515	29530	29545	29600	29615	29630	29645	29700	29715	29730	29745	29800	29815	29830	29845	29900	29915	29930	29945	30000	30015	30030	30045	30100	30115	30130	30145	30200	30215	30230	30245	30300	30315	30330	30345	30400	30415	30430	30445	30500	30515	30530	30545	30600	30615	30630	30645	30700	30715	30730	30745	30800	30815	30830	30845	309
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**EXHIBIT H**  
**Environmental Conditions**

## **Exhibit I**

**To be determined by the Parties in accordance with the provisions of Section 8.3.2**

**EXHIBIT B**

This **FIRST AMENDMENT** (this "**First Amendment**") to the **DEFINITIVE AGREEMENT** (the "**Agreement**") dated as of October 10, 2008 by and between **CSX TRANSPORTATION, INC.**, a ("**Seller**,"), and **THE COMMONWEALTH OF MASSACHUSETTS**, acting by and through its **EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS** ("**EOT**"), is made by Seller and the **MASSACHUSETTS DEPARTMENT OF TRANSPORTATION** ("**Buyer**"), established pursuant to Chapter 6C of the Massachusetts General Laws and the successor to EOT's interest in the Agreement, and shall be effective as of the 23<sup>rd</sup> day of November, 2009 (the "**First Amendment Effective Date**").

## **RECITALS**

Whereas, Buyer and Seller (collectively, the "**Parties**"), wish to amend the Agreement as set forth below with effect as of the First Amendment Effective Date.

NOW, THEREFORE, in consideration for the agreements and mutual undertakings and covenants made in this Agreement, Seller and Buyer hereby agree as follows:

## **SECTIONS**

### **1. PURCHASE AND SALE**

1.1 Notwithstanding anything to the contrary contained in the Agreement, including Section 1.1.2, the yard lead tracks at the Framingham, Westborough and Worcester yards, located on real property to be identified in Exhibit A-1 of the Agreement, shall be excluded from the sale and not transferred to Buyer.

### **2. CLOSING**

2.1 **Identification of Closings.** **Section 2.1** of the Agreement is hereby deleted and restated in its entirety as follows:

"2.1 **The Closing.** The Closing shall occur in two separate stages referred to hereinafter as the "**First Closing**," (which shall include two simultaneous sub-transactions, the "**South Coast Transaction**," as described below, and the sale of the BPY Assets (the "**BPY Transaction**") and the "**Second Closing**." The First Closing (including the South Coast Transaction and the BPY Transaction), and the Second Closing are sometimes hereinafter each referred to interchangeably as the "**Closing**". So much of the Railroad Assets as constitute the Grand Junction Branch and the Boston Terminal Running Track are herein referred to as the "**BPY Assets**" and shall be transferred at the First Closing. So much of the Railroad Assets as constitute the South Coast Line are hereinafter referred to as the "**South Coast Assets**" and also shall be transferred at the First Closing. The **BPY Assets** and the **South Coast Assets** may be referred to collectively as the "**First Closing Assets**." So much of the Railroad Assets as constitute the Boston Main Line are hereinafter referred to as the "**Second Closing Assets**" and shall be transferred at the Second Closing. Whenever the word "**Closing**" is used herein it shall refer to the Closing at which

the Railroad Assets for that particular Closing are to be delivered and all references to the Parties' respective rights and obligations shall be with respect to that particular Closing. The Closing shall take place at the offices of a nationally recognized title insurance company (the "**Title Company**") with an office in Boston, Massachusetts, mutually acceptable to both Buyer and Seller, as an escrow agent ("**Escrow Agent**"). The Parties agree that the Closing shall be conducted through the Title Company as an Escrow Agent. Upon satisfaction or completion of all closing conditions and deliveries, the Parties shall direct the Escrow Agent to immediately record and deliver the closing documents to the appropriate Parties and make disbursements according to the closing statements executed by Buyer and Seller."

2.2 The South Coast Transaction. The Agreement is hereby amended to add the following **Section 2.2.1** to the Agreement:

"2.2.1 The South Coast Transaction shall include the transfer to Buyer of the South Coast Assets, subject to the CSXT Easement, and the simultaneous sale and assignment by Seller to a third party meeting the Transferee Standards (the "**Short Line Acquirer**") of that portion of the CSXT Easement as pertains to the South Coast Assets, pursuant to an easement sale agreement (the "**Short Line Easement Sale Agreement**"). The consummation of the South Coast Transaction shall be a condition of the First Closing, as that term is used in this Agreement, and shall be subject to (i) the execution and delivery by CSXT, the Short Line Acquirer, and Buyer, of an interchange agreement (the "**Interchange Agreement**"), (ii) the execution and delivery by Buyer, or MBTA, and the Short Line Acquirer of an operating agreement (the "**Short Line Operating Agreement**") acceptable to Buyer or MBTA in its discretion (with notice to CSXT by Buyer of execution and delivery thereof) and (iii) the execution and delivery by Seller, the Short Line Acquirer, Buyer and MBTA of the Short Line Easement Sale Agreement. Whenever any reference in this Agreement is made to the First Closing or the consummation of the First Closing, the reference shall be interpreted to mean and include the South Coast Transaction and the consummation of the South Coast Transaction. For the avoidance of doubt, the South Coast Transaction (i) shall be deemed a transaction contemplated by **Section 2.4.6** of the Agreement, (ii) shall not be subject to an **Easement Transfer Payment** and (iii) shall not be prohibited by **Section 19.4** of the Agreement. Further, the Short Line Acquirer shall be deemed a Benefitted Holder and neither Party shall be deemed to be in default of this Agreement in the event the South Coast Transaction does not occur for any reason.

2.3 Closing Dates; Deliveries at Closing.

2.3.1 **Section 2.2** of the Agreement is hereby amended by replacing the words "June 15, 2009" with the words "May 15, 2010".

2.3.2 The introductory paragraph of **Section 2.5.1** of the Agreement is hereby amended by replacing the word "(xvii)" with the word "(xx)".



2.3.3 **Section 2.5.1(xvi)** of the Agreement is hereby deleted and restated in its entirety as follows:

"(xvi) on the First Closing Date only, an environmental release from the MBTA in a form to be mutually agreed upon between Seller and the MBTA, the benefit of which shall run to Seller and to any assignee of all or any part of the CSXT Easement (the "**MBTA Environmental Release**")";"

2.3.4 **Section 2.5.1(v)** is hereby deleted and restated in its entirety as follows:

"(v) on the First Closing Date only, an operating agreement (the "**Operating Agreement**") in a form to be mutually agreed upon by the Parties without restriction on the part of either Party with respect to the contents of the Operating Agreement and the resolution of liability, which Operating Agreement shall govern the portion of the Boston Main Line currently governed by that certain agreement between Seller and the MBTA dated September 19, 1994 regarding the rail line from mile post 22.4 to CP 45;"

2.3.5 **Section 2.5.1(xvii)** is hereby revised to replace the period at the end thereof with a semicolon.

2.3.6 **Section 2.5.1** is hereby amended to include three new subsections (xviii), (xix), and (xx) as follows:

"(xviii) on the First Closing Date only, the Interchange Agreement and the Short Line Easement Sale Agreement, and

(xix) on the First Closing Date only, the 2009 Amendment to the 1985 Trackage Rights Agreement, which amendment shall include the addition to the property governed by the 1985 Trackage Rights Agreement those portions of the BPY Assets that are not currently governed by the 1985 Trackage Rights Agreement, and

(xx) on the Second Closing date only, the Third Track Improvements Agreement."

2.3.7 The introductory paragraph of **Section 2.5.2** of the Agreement is hereby amended by replacing the word "(vii)" with the word "(x)".

2.3.8 **Section 2.5.2(vi)** is hereby revised to delete the word "and" at the end thereof.

2.3.9 **Section 2.5.2(vii)** is hereby revised to replace the period at the end thereof with a semicolon.

2.3.10 **Section 2.5.2** is hereby amended to include three new subsections (viii), (ix), and (x) as follows:

"(viii) on the First Closing Date only, the Interchange Agreement and the Short Line Easement Sale Agreement, and

(ix) on the First Closing Date only, the 2009 Amendment to the 1985 Trackage Rights Agreement, and

(x) on the Second Closing date only, the Third Track Improvements Agreement."

2.4 **Conditions Precedent to Obligations of Buyer.**

2.4.1 **Section 2.8** is hereby amended to include a new subsection 2.8.6 as follows:

"2.8.6 Prior to the Second Closing, CSXT shall engineer and activate at its sole cost and expense, a modified signal design between CP-43 and CP-39 on the Boston Main Line to allow access to Track 2 between such control points that allows Seller to conduct switching operations. Specific design parameters for such signal design shall be developed through joint consultation between Seller and MBTA with the express goal being to support efficient switching operations at the east end of Worcester without impairing MBTA passenger service. Prior to the Second Closing, the MBTA and Seller shall jointly develop Operating Rules and Protocols, subject to their mutual reasonable approval, to be in effect after the Second Closing, to govern the use of the signal modification to accommodate the needs of Buyer and the MBTA and to allow Seller to safely and efficiently use Track 2 for switching purposes to and from the intermodal terminal in Worcester (the "**Track 2 Operating Rules**")."

2.4.2 **Section 2.8** is hereby amended to include a new subsection 2.8.7 as follows:

"2.8.7 Prior to the Second Closing, the parties shall enter into an agreement (the "**Third Track Improvements Agreement**") to establish mutually acceptable terms and conditions for the construction, operation and maintenance of a third track on the Boston Main Line right of way between CP-43 and CP-39, or such other limits as the Parties may agree (the "**Third Track Improvements**") for CSXT's access to and efficient use of the terminal facilities in Worcester."

2.5 **Conditions Precedent to Obligations of Seller.**

2.5.1 **Section 2.9** is hereby amended to include a new subsection 2.9.4 as follows:

"2.9.4 Prior to the First Closing, Seller shall have been satisfied in its sole discretion that the material aspects of the MBTA's exposure to tort liability

existing prior to the passage of the 2009 Act Modernizing the Transportation Systems of the Commonwealth (the "**2009 Act**") have been restored, or that any impact of such Act on Seller's liability exposure under the 1985 Trackage Rights Agreement has been reasonably mitigated, either by (a) an agreed-upon amendment to the 1985 Trackage Rights Agreement (the "**2009 Amendment to the 1985 Trackage Rights Agreement**") which includes the reasonable mitigation of any impact of the 2009 Act on Seller's liability exposure under the 1985 Trackage Rights Agreement; (b) the adoption of legislation by the Commonwealth reasonably satisfactory to Seller; or (c) another mechanism reasonably satisfactory to Seller."

2.5.2 **Section 2.9** is hereby amended to include a new subsection 2.9.5 as follows:

"2.9.5 Prior to the earlier to occur of (i) the Second Closing or (ii) Seller's no longer providing maintenance or dispatch services to MBTA with respect to the segments identified on Exhibit A to this Agreement, legislation reasonably satisfactory to Seller in its sole discretion shall have been adopted by the Commonwealth affording Seller, and its successors and assigns, the benefit of the limitation on certain liability described in chapter 161A, Section 43."

2.5.3 **Section 2.9** is hereby amended to include a new subsection 2.9.6 as follows:

"2.9.6 In connection with the legislative modifications referenced in sections 2.9.4(b) and 2.9.5 above, Buyer shall provide written notice (the "**Legislation Notice**") to Seller of the adoption and effective date of any such legislation. Seller agrees to notify Buyer not later than on the fifteenth (15<sup>th</sup>) business day following the date of receipt by Seller of the Legislation Notice as to whether such legislation is satisfactory to Seller under said Section 2.9.4(b) or 2.9.5, as applicable."

2.5.4 **Section 2.9** is hereby amended to include a new subsection 2.9.7 as follows:

"2.9.7 Prior to the Second Closing, CSXT shall engineer and activate at its sole cost and expense, a modified signal design between CP-43 and CP-39 on the Boston Main Line to allow access to Track 2 between such control points that allows Seller to conduct switching operations. Specific design parameters for such signal design shall be developed through joint consultation between Seller and MBTA with the express goal being to support efficient switching operations at the east end of Worcester without impairing MBTA passenger service. Prior to the Second Closing, the MBTA and Seller shall jointly develop the Track 2 Operating Rules, subject to their mutual reasonable approval

2.5.5 **Section 2.9** is hereby amended to include a new subsection 2.9.8 as follows:

"2.9.8 Prior to the Second Closing, the parties shall enter into the Third Track Improvements Agreement.

### **3. ONGOING OPERATIONS**

3.1 Operating Agreement. Section 5.2 of the Agreement is hereby deleted and restated in its entirety as follows:

"5.2 Operating Agreement. The Parties agree that the use of the Railroad Assets (other than the South Coast Assets which will be subject to the Short Line Easement Sale Agreement) as they are acquired by Buyer shall be governed thereafter by the Operating Agreement and the 1985 Trackage Rights Agreement as amended, as applicable."

3.2 MBTA Role. Section 5.3 of the Agreement is hereby amended by replacing the words "and 5.2" with the words ", 5.2 and 5.4".

3.3 Turnover of Maintenance and Dispatching. Article 5 of the Agreement is hereby amended to include a new Section 5.4 as follows:

"5.4 Maintenance and Dispatch. At the First Closing, Seller will no longer own the BPY Assets or the South Coast Assets. As of such date, Seller will no longer have any maintenance or dispatching obligations with respect to the South Coast Assets or the BPY Assets. At the Second Closing, (i) Seller will not own any of the Railroad Lines other than the yard lead tracks at the Framingham, Westborough and Worcester yards (the "Yard Lead Tracks"), which tracks will continue to be owned by Seller and are located on real property to be identified in Exhibit A-1, and (ii) will no longer have any maintenance and dispatching obligations with respect to any of the Railroad Lines other than the Yard Lead Tracks, pursuant to Seller's contractual obligations with respect to the Yard Lead tracks as set forth in the Operating Agreement. The Parties shall mutually determine the exact time and manner of the turn over to Buyer of those maintenance and dispatching functions on the Railroad Lines that are currently performed by Seller and are to be assumed by Buyer pursuant to the Operating Agreement or the 1985 Trackage Rights Agreement, as amended, as applicable, or assumed by the Short Line Acquirer pursuant to the Short Line Operating Agreement. The determination for the time and manner of the assumption of maintenance and dispatching by the Buyer and Short Line Acquirer (including, without limitation, designation of the operating control point for the Grand Junction Branch, which designation shall be published in the local timetables of Seller and Buyer (or Buyer's operator of the Grand Junction Branch)) shall be included in the Turnover Plan."

### **4. TAX OPINION**

4.1 Tax Opinion Contingency Date. The Tax Opinion Contingency Date referred to in Section 9.1 of the Agreement is hereby revised to that date which is ninety (90) days after the First Amendment Effective Date.

## **5. DUE DILIGENCE**

5.1 Due Diligence/Termination Rights. Section 8.3.1 of the Agreement is hereby amended to re-define the Due Diligence Contingency Date as January 25, 2010.

## **6. MUTUAL CONTINGENCIES**

6.1 Surface Transportation Board. Section 10.1 of the Agreement shall be deleted and restated in its entirety as follows:

### **"10.1 Surface Transportation Board Contingency, FRA Notice.**

10.1.1 Buyer and Seller shall take all reasonably necessary steps to secure the determination of the Surface Transportation Board ("STB") that:

(i) other than with respect to the Short Line Transaction, the STB has no jurisdiction over any of the transactions contemplated in this Agreement, or over any of the transactions contemplated in any ancillary agreement contemplated by this Agreement, and

(ii) that with respect to the Short Line Transaction, the STB has jurisdiction but will grant an application allowing the transaction under applicable law (the "**STB Decision or STB Decisions**").

10.1.1.1 The Parties agree that they shall cooperate with each other in connection with all filings made with the STB and that neither Party shall make any filing with the STB without first having delivered a copy of such filing to the other Party at least seven (7) days before such filing is made. Buyer will be the principal filing party with respect to the application, petition for exemption, or notice of exemption described in **Section 10.1.1(i)** of the Agreement. CSXT will be the principal filing party with respect to the applications, petition for exemption, or notice of exemption described in **Section 10.1.1(ii)** of the Agreement. The Parties will use all reasonable commercial efforts to file the respective applications, petition for exemption, or notice of exemption on or before, and will request that the STB treat the applications on an expedited and, or a consolidated basis.

10.1.2 Either Party shall have the unilateral right to terminate and rescind this Agreement prior to the First Closing or the Second Closing, as the case may be, if:

(i) the STB has not dismissed the application, petition for exemption, or notice of exemption filed pursuant to **Section**

**10.1.1 (i)** of this Agreement and granted the application filed pursuant to **Section 10.1.1(ii)** of this Agreement; and

(ii) the STB shall have found that it has jurisdiction over any of the transactions contemplated in this Agreement and, in connection therewith, shall have imposed any conditions, including labor protective conditions, which either Party in its sole and absolute discretion deems unacceptable; or

(iii) the Parties have not complied with the conditions, if any, imposed by the STB, in its decision, to the extent required by the STB's decision to be performed prior to Closing; or

(iv) any of the transactions shall have been stayed or enjoined by the STB or by any court; or

(v) any claim, litigation, labor dispute or work stoppage shall be threatened or pending in connection with any of the transactions contemplated in the Non-Binding Term Sheet dated as of July 31, 2006 between the Parties, this Agreement, any agreement to be executed in connection herewith, or any agreement between Buyer and Seller related to the Subject Property.

**10.1.3** Any notices required to be given to the Federal Railroad Administration ("FRA") pursuant to 49 C.F.R. § 213.5(c), if applicable, shall have been given at least thirty (30) days prior to the First Closing Date.

**10.1.4** If this Definitive Agreement is terminated pursuant to **Section 10.1.2** above, (i) subject to **Section 3.3**, the Deposit shall be returned forthwith, (ii) except as hereinafter set forth, all obligations of the Parties shall cease and (iii) this Agreement shall be void and without recourse to the parties hereto. Notwithstanding the foregoing, both Parties' obligation to perform the Clearance Work, as provided in and subject to **Section 4** and Buyer's right to run the Additional Trains as provided in and subject to **Section 5.1.3**, shall continue in full force and effect notwithstanding any termination of this Agreement for any reason.

## **7. NOTICES**

**7.1 Notices.** **Section 16** of the Agreement is hereby revised to replace "Executive Office of Transportation" with "Massachusetts Department of Transportation"; to replace "James A. Aloisi, Esq." with "Peter N. Kochansky, Esq.", and to include the following mailing address for MBTA:

Massachusetts Bay Transportation Authority  
10 Park Plaza  
Boston, MA 02116  
Attn: General Manager

**8. MASSDOT**

8.1 Chapter 25 of the 2009 Act provides, in relevant part, for the dissolution of EOT, the creation of Buyer, and, pursuant to Section 150 and 182 of the 2009 Act, the assumption by Buyer of all duly existing contracts and obligations of EOT, as of November 1, 2009. To the extent that the consent of the Seller under the Agreement may be needed with respect to such assumption by Buyer of the rights and obligations of EOT under the Agreement, Seller hereby consents to such assumption.

**9. REVISED AGREEMENT**

9.1 Effect of Amendments. As of the Effective Date of the First Amendment, the term "Agreement" shall include the amendments contained herein.

[signature page follows]

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be signed as of the First Amendment Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

APPROVAL AS TO FORM


**BUYER:**  
MASSACHUSETTS DEPARTMENT  
OF TRANSPORTATION

By: \_\_\_\_\_  
Name: Monica Conyngham  
Title: General Counsel,  
Massachusetts Department  
of Transportation

By: \_\_\_\_\_  
Name: Jeffrey B. Mullan  
Title: Secretary and Chief Executive Officer

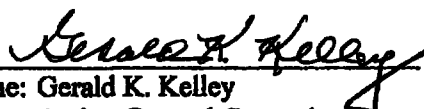
**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**  
only for the purposes of joining in those  
sections of this First Amendment  
creating rights or obligations of MBTA or  
affecting its rights or obligations under  
the Agreement as originally joined by  
MBTA.

**SELLER:**  
**CSX TRANSPORTATION, INC.**

By:   
Name: William A. Mitchell  
Title: Acting General Manager

By: \_\_\_\_\_  
Name: Lisa A. Mancini  
Title: Authorized Agent

APPROVAL AS TO FORM

By:   
Name: Gerald K. Kelley  
Title: Acting General Counsel,  
Massachusetts Bay  
Transportation Authority



IN WITNESS WHEREOF, the Parties have caused this First Amendment to be signed as of the First Amendment Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

APPROVAL AS TO FORM

**BUYER:**  
**MASSACHUSETTS DEPARTMENT**  
**OF TRANSPORTATION**

By: Monica Conyngham  
Name: Monica Conyngham  
Title: General Counsel,  
Massachusetts Department  
of Transportation

By: Jeffrey B. Mullan  
Name: Jeffrey B. Mullan  
Title: Secretary and Chief Executive Officer

**MASSACHUSETTS BAY**  
**TRANSPORTATION AUTHORITY**  
only for the purposes of joining in those  
sections of this First Amendment  
creating rights or obligations of MBTA or  
affecting its rights or obligations under  
the Agreement as originally joined by  
MBTA.

**SELLER:**  
**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Name: William A. Mitchell  
Title: Acting General Manager

By: \_\_\_\_\_  
Name: Lisa A. Mancini  
Title: Authorized Agent

APPROVAL AS TO FORM

By: \_\_\_\_\_  
Name: Gerald K. Kelley  
Title: Acting General Counsel,  
Massachusetts Bay  
Transportation Authority

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be signed as of the First Amendment Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

APPROVAL AS TO FORM

**BUYER:**  
**MASSACHUSETTS DEPARTMENT**  
**OF TRANSPORTATION**


By: \_\_\_\_\_  
Name: Monica Conyngham  
Title: General Counsel,  
Massachusetts Department  
of Transportation

By: \_\_\_\_\_  
Name: Jeffrey B. Mullan  
Title: Secretary and Chief Executive Officer

**MASSACHUSETTS BAY**  
**TRANSPORTATION AUTHORITY**  
only for the purposes of joining in those  
sections of this First Amendment  
creating rights or obligations of MBTA or  
affecting its rights or obligations under  
the Agreement as originally joined by  
MBTA.

**SELLER:**  
**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Name: William A. Mitchell  
Title: Acting General Manager

By:   
Name: Lisa A. Mancini  
Title: Authorized Agent

APPROVAL AS TO FORM

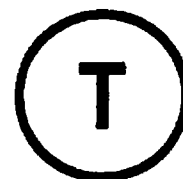
By: \_\_\_\_\_  
Name: Gerald K. Kelley  
Title: Acting General Counsel,  
Massachusetts Bay  
Transportation Authority

**EXHIBIT C**



# **TRACKAGE RIGHTS AGREEMENT**

**Effective July 1, 1985**



**MASSACHUSETTS  
BAY  
TRANSPORTATION  
AUTHORITY**

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## ARTICLE 1.

### INTRODUCTION AND RECITALS

#### Section 1.01. Introduction

The Massachusetts Bay Transportation Authority (MBTA) and the Consolidated Rail Corporation (CONRAIL) enter into this Agreement for the purpose of granting to each other certain rights to conduct passenger or freight services on property which they separately own or control, and for the purposes of defining their respective rights and obligations with respect to same.

#### Section 1.02. Recitals

(a) On January 17, 1973, the Trustees of the property of the Penn Central Transportation Company ("Penn Central") in proceedings in reorganization in the United States District Court for Eastern District of Pennsylvania conveyed by deed for the consideration of \$19,500,000 all their interest in certain described railroad rights-of-way to the MBTA, a public authority having responsibility for conducting mass transportation services in Greater Boston. The purpose of the sale was to insure that important rail corridors were preserved for commuter as well as intercity passenger and freight service.

(b) The rights-of-way conveyed to the MBTA as provided in paragraph (a) above included the following lines, among others: the Boston & Albany Main Line from



Riverside to Framingham; the former Boston & Providence Main (Shore) Line from Boston to the boundary line between Massachusetts and Rhode Island; the so-called Plymouth, Needham, Dedham, Franklin, and Stoughton Branches; and a portion of the Middleboro Branch from Milepost 0.0 in Braintree to Milepost 11.4 in Brockton.

(c) Penn Central reserved from the conveyance a transportation easement "to use such portions of the premises [therein] granted, together with the existing buildings, structures, railroad track, facilities and appurtenances thereon as may be necessary, as shall be mutually agreed upon between the parties, for transportation purposes, in common with [MBTA's] use thereof". The parties also covenanted that in cases of joint use of rights-of-way, costs of operations and maintenance would be apportioned on a "fair and reasonable" basis; that the Penn Central, as Grantor under the 1973 Deed, would "bear the cost of necessary maintenance, repair and alteration of all buildings, structures, tracks, facilities and appurtenances, used solely by Grantors"; and that MBTA would assume such cost "to the extent of such joint use, provided, however, that neither party shall be obligated to pay more than the amount which would have been required had there been a separate rather than a joint use."

(d) In 1976, pursuant to the terms of the Regional Rail Reorganization Act of 1973 and the Final System Plan adopted by the United States Railway Association

(U.S.R.A.) and approved pursuant to said Act, as amended, the Penn Central conveyed to CONRAIL all of Penn Central's rights and obligations under the conveyance described above to MBTA.

(e) On February 19, 1976, the U.S.R.A. Board of Directors, acting pursuant to the Final System Plan, resolved to designate MBTA as transferee from Penn Central of an additional railroad right-of-way known as the Dorchester Branch, with the provision that CONRAIL would retain all freight rights. On March 30, 1976, Penn Central conveyed by deed to the MBTA all the interest of Penn Central in such right-of-way without reserving transportation easements.

(f) In addition to those rights-of-way acquired from Penn Central, MBTA also owns or controls other right-of-way segments which CONRAIL desires to use, including the Braintree to South Braintree portion of the former Old Colony Line, and the East Route Main Line.

(g) In addition to those rights-of-way owned or controlled by MBTA which CONRAIL desires to use, CONRAIL owns or controls portions of a right-of-way segment known as the Grand Junction Secondary Branch from the vicinity of the Beacon Park Yard to the junction with the MBTA East Route Main Line at Tower C. CONRAIL also has been assigned a grant of easement created by instrument dated December 27, 1962 from the Massachusetts Turnpike Authority to the New York Central Railroad Company over the right-of-way

owned by the Turnpike Authority and known as the Boston & Albany Main Line from a point outside of South Station, Boston, to Riverside. Use of both of these segments of right-of-way is desired by MBTA jointly with CONRAIL.

(h) MBTA desires to define the scope of the use and of the operating rights which CONRAIL shall have on MBTA rights-of-way in order to insure continuing commuter services, both now and in the future on such rights-of-way, and to provide for other joint uses of such rights-of-way on a continuing basis, including the intercity passenger services conducted by AMTRAK, as well as CONRAIL'S freight service and desires further to define the scope of its use and operating rights on CONRAIL rights-of-way to facilitate its commuter services.

(i) CONRAIL, in accordance with the general purposes of the Regional Rail Reorganization Act of 1973, as amended, the Railroad Revitalization and Regulatory Reform Act of 1976, and the Northeast Rail Service Act of 1981, desires to define the scope of the use and of the operating rights which MBTA shall have on rights-of-way owned or controlled by CONRAIL to facilitate the operation of commuter service and other passenger service and desires further to define the scope of its use and operating rights on MBTA rights-of-way to facilitate its own interstate freight service.

(j) The parties also desire to address their respective operating and maintenance obligations; their

charges to each other; their joint and separate liabilities for accidents; and other matters affecting their relationship with respect to the rail properties defined herein.

(k) Although the parties have sought to provide a comprehensive agreement with respect to their relationship as described herein, CONRAIL has agreed, at the request of MBTA, to defer resolution of certain issues related to their respective rights and obligations as to the former Boston and Providence Main (Shore) Line right-of-way, concerning which the parties intend to conclude as expeditiously as possible a supplement to the within Agreement.

(l) Although the parties have sought to provide a comprehensive agreement with respect to their relationship as described herein, MBTA has agreed, at the request of CONRAIL, to defer resolution of certain issues relating to MBTA's use of the Framingham, MA Station area, more specifically that area, identified as Parcel No. 3 on Exhibit 10 attached hereto as part of this Agreement, located between the east and west leg of the Wye desired by MBTA to provide patron parking, concerning which the parties intend to conclude as expeditiously as possible a supplement to the within Agreement. CONRAIL, in recognition of MBTA's need to protect the operating integrity of passenger service, has agreed to include provisions for certain other MBTA requirements at Framingham, MA and these provisions are included within this Agreement at Section 10.03..

## ARTICLE 2

### DEFINITIONS

Unless the context otherwise requires, the following terms shall have the meanings provided below.

"CONRAIL", the Consolidated Rail Corporation, a corporation of the Commonwealth of Pennsylvania, as established in Title III of the Regional Rail Reorganization Act of 1973, as amended.

"CONRAIL Rail Properties", the rail properties listed and identified in ADDENDUM 2 to this Agreement, which is incorporated by reference herein, including, except as otherwise specifically provided in this Agreement, additions and betterments thereto, and turnout or sidetracks used for passenger service which connect with the through lines listed in ADDENDUM 2, up to but not beyond the point of clearance.

"Car Mile", a locomotive or a car, whether or not loaded, whether or not carrying passengers or freight, moved one mile in for-hire or revenue service.

"Effective Date", the effective date of this Agreement as provided in Section 9.01 hereof.

"FRA", the Federal Railroad Administration.

"FRA Track Safety Regulations", the regulations promulgated by FRA, codified at 49 C.F.R. Parts 200-268 and in effect as of November 1, 1982, as amended from time to time.

"MBTA", the Massachusetts Bay Transportation Authority, a body politic and corporate created by and acting pursuant to St. 1964, C. 563, as amended.

"MBTA Rail Properties", the rail properties listed and identified in ADDENDUM 1, which is incorporated by reference herein, including, except as otherwise specifically provided in this Agreement, additions and betterments thereto, and turnout or sidetracks used for freight service which connect with the through lines listed in ADDENDUM 1, up to but not beyond the point of clearance. Category A MBTA Rail Properties shall be those which are identified as such in ADDENDUM 1 which are used jointly by the parties for their respective operations. Category B MBTA Rail Properties shall be those which are identified as such in ADDENDUM 1 which are used exclusively by CONRAIL for its freight service. It is agreed by the parties that under certain circumstances properties may change in status from Category B to Category A properties, or from Category A to Category B properties, or may be deleted from ADDENDUM 1 altogether, as provided in Section 3.02; to the extent of such changes, references to properties in this Agreement at ADDENDUM 1 shall be deemed to include such properties as changed from time to time by MBTA or to exclude such properties as appropriate.

"1973 Deed", the deed from the Trustees of the property of the Penn Central Transportation Company, in the proceedings for reorganization of same as Debtor in the

United States Court for the Eastern District of Pennsylvania, to the MBTA, dated January 17, 1973 and recorded in the Suffolk Registry of Deeds at Book 8601, Page 179.

"Operating contractors", those entities contracted with by either of the parties to operate rail service on such party's behalf.

"Owner" shall mean CONRAIL when referring to CONRAIL Rail Properties and shall mean MBTA when referring to MBTA Rail Properties.

"Parties" shall mean CONRAIL and MBTA.

"Rail Properties", either the MBTA Rail Properties, or the CONRAIL Rail Properties, or both, as appropriate.

"Transportation Easement", the easement for transportation purposes reserved by the Grantor in the 1973 Deed including the covenants, limitations and other provisions as set forth with respect to such easement in said deed.

"User" shall mean CONRAIL when referring to MBTA Rail Properties and shall mean MBTA when referring to CONRAIL Rail Properties.

"direct charges" includes appropriate surcharges generally accepted as standard throughout the Railroad Industry and as enumerated in CONRAIL's EA-1 "Schedule of Rates and Surcharges Covering Billing Railroads For Use Of Facilities, Services and Equipment, a copy of which is attached hereto as EXHIBIT 12, dated July 1, 1986, and as amended from time to time in accordance with the provisions of Section 12.10 hereof.

### ARTICLE 3

#### ACCESS RIGHTS

##### Section 3.01. Access to MBTA Rail Properties

(a) MBTA grants to CONRAIL, subject to the provisions of this Agreement, the non-exclusive right to enter upon and to utilize the existing tracks and related operating facilities located on MBTA Rail Properties included in ADDENDUM 1 for the purpose of performing CONRAIL's freight service and of securing CONRAIL Rail Properties and equipment. Without limitation of the foregoing, CONRAIL's access rights as just described are for the purpose of permitting CONRAIL to operate road and local freight trains, and related switching movements, special trains, locomotives, work trains and other on-track equipment, and CONRAIL shall have access to all running, side, switching, yard, and interchange tracks included in MBTA Rail Properties necessary for the provision of CONRAIL's freight service, including for the purpose of storing equipment, provided that such access rights shall not unreasonably interfere with MBTA's current or future uses of its Rail Properties.

(b) Nothing in this Agreement shall derogate from MBTA's right to utilize, directly or through its operating contractors, or to permit other carrier(s) to utilize the MBTA Rail Properties for the provision of common or contract carrier passenger services, including without limi-



tation, long-haul, intercity service as well as commuter service, provided that such utilization does not interfere unreasonably with the access rights granted to CONRAIL pursuant to the provisions of this Agreement.

(c) Except as expressly provided herein, nothing in this Agreement shall be construed to grant to CONRAIL a right to approve actions by MBTA affecting MBTA Rail Properties, including, without limitation, alterations and improvements thereto, relocations, use of air or subsurface rights for development or other purposes, and granting of easements for utilities and crossings, provided that MBTA shall keep CONRAIL reasonably informed of those actions affecting CONRAIL's use contemplated hereunder and that such actions shall not unreasonably interfere with the access rights granted to CONRAIL.

(d) With respect to the properties owned or controlled by MBTA which are described below and which generally are used exclusively by MBTA but which CONRAIL desires from time to time to use on an emergency basis, MBTA grants to CONRAIL the right to enter upon and to utilize such properties on such emergency basis at the direction and control of MBTA, provided that such use shall be subject to all other provisions of this Agreement and shall be considered for such purposes to be MBTA Rail Properties. Said properties are: Franklin and East Junction (Attleboro) layover facilities, and all terminal tracks along the Boston Line approaches to South Station between Mileposts

0.45 and 0.00, provided that any such use of areas adjacent to passenger platforms or facilities shall only be with equipment that does not impact upon or damage such platforms or facilities.

**Section 3.02. Changes in Status of MBTA Rail Properties**

(a) Nothing in this Agreement shall derogate from MBTA's right to determine which category its Rail Properties shall fall within, as shown in ADDENDUM 1. In the event that passenger services are instituted by MBTA or a carrier authorized by MBTA on MBTA Rail Properties shown in ADDENDUM 1 as Category B properties, such properties shall be designated as Category A properties. In the event that MBTA discontinues passenger services over any of the Category A MBTA Rail Properties, such properties shall be designated as Category B properties for purposes of this Agreement. In each case, the change in designation of the status of the rail property shall be effective upon the date specified by MBTA in a written notice provided in advance thereof to CONRAIL.

(b) Without limitation of the foregoing, in the event that CONRAIL's easement rights over, or use of, any of the MBTA Rail Properties shall terminate, whether in accordance with the provisions of the 1973 Deed, or through abandonment, transfer or otherwise, such property shall be deemed deleted from ADDENDUM 1 without the need for written notice thereof by either party to the other. Abandonment

shall be deemed to mean a permanent cessation of use pursuant to authority of the Interstate Commerce Commission or other regulatory agency having jurisdiction.

Section 3.03. Access to CONRAIL Rail Properties

(a) CONRAIL grants to MBTA, subject to the provisions of this Agreement, the non-exclusive right to enter upon and to utilize the tracks and related operating facilities located on CONRAIL Rail Properties included in ADDENDUM 2 for the purpose of performing MBTA's passenger service and of securing MBTA Rail Properties and equipment. Without limitation of the foregoing, MBTA's access rights as just described are for the purpose of permitting MBTA to operate passenger cars or trains in revenue or non-revenue service, as well as special trains, locomotives, work trains and other on-track equipment, and MBTA shall have access to all running, side, switching, yard, and interchange tracks included in CONRAIL Rail Properties necessary for the provision of MBTA's passenger service, including for the purpose of storing equipment; provided that such access rights shall not unreasonably interfere with CONRAIL's current or future uses of its Rail Properties.

(b) Nothing in this Agreement shall derogate from CONRAIL's right to permit other carrier(s) to utilize the CONRAIL Rail Properties for the provision of common or contract freight rail services, provided that any such utilization does not interfere unreasonably with the access rights

granted to MBTA pursuant to the provisions of this Agreement.

(c) Except as expressly provided herein, nothing in this Agreement shall be construed to grant to MBTA a right to approve actions by CONRAIL affecting CONRAIL Rail Properties, including, without limitation, alterations and improvements thereto, relocations, use of air or subsurface rights for development or other purposes, and granting of easements for utilities and crossings, provided that CONRAIL shall keep MBTA reasonably informed of those actions affecting MBTA's use contemplated hereunder and that such actions shall not unreasonably interfere with the access rights granted to MBTA.

(d) With respect to the properties owned or controlled by CONRAIL which are described below and which generally are used exclusively by CONRAIL but which MBTA desires from time to time to use on an emergency basis, CONRAIL grants to MBTA the right to enter upon and to utilize such properties on an emergency basis at the direction and control of CONRAIL, provided that such use shall be subject to all other provisions of this Agreement and shall be considered for such purposes to be CONRAIL Rail Properties. Said properties are: Framingham Yard and Braintree Yard.

ARTICLE 4  
MANAGEMENT AND OPERATIONS

Section 4.01. MBTA Rail Properties

(a) Except as otherwise provided in Section 4.03 of this Agreement, MBTA retains the right to exercise and to perform management, regulatory and operational control of all rail service over MBTA Rail Properties, including, without limitation, dispatching and control of all trains, provided that such control shall be exercised in a manner which does not interfere unreasonably with the exercise by CONRAIL of its access rights to MBTA Rail Properties under this Agreement.

(b) It is understood by the parties that the scheduling, dispatching and control of MBTA passenger trains on MBTA Rail Properties shall take preference over all other train scheduling, dispatching and control, including, without limitation, scheduling, dispatching and control of freight service on MBTA Rail Properties.

(c) CONRAIL, upon sixty (60) days written notice in advance thereof, shall have the right to amend and, in particular, to increase the level of its freight service on MBTA Rail Properties beyond that existing as of the Effective Date of this Agreement, which amendments to, or increase in, service shall be subject to the provisions of this Agreement, including, without limitation, Section 4.01(b), provided that the character, scheduling or extent

of its freight service shall not interfere unreasonably with MBTA's current or future use of its Rail Properties.

(d) CONRAIL may operate overhead, special, or emergency trains on MBTA Rail Properties provided that such operations shall not interfere unreasonably with MBTA's current or future uses of its Rail Properties.

(e) Nothing in this Agreement shall derogate from MBTA's right to operate special or emergency trains over Category B Rail Properties, provided that, except as the status of such properties may change in accordance with Section 3.02, MBTA shall pay the car mile charges otherwise assessable in connection with such operations by Owner on User in accordance with ARTICLE 6.

#### Section 4.02. CONRAIL Rail Properties

(a) CONRAIL retains the right to exercise and to perform management, regulatory and operational control of all rail service over CONRAIL Rail Properties, including, without limitation, dispatching and control of all trains, provided that such control shall be exercised in a manner which does not interfere unreasonably with the exercise by MBTA of its access rights to CONRAIL Rail Properties under this Agreement.

(b) It is understood by the parties that the scheduling of passenger trains on CONRAIL Rail Properties shall take preference over all other train scheduling. With respect to the matter of priorities of dispatching and

control of train movements, it is agreed that passenger trains shall have priority over freight trains, and further, that with respect to priorities among passenger trains (AMTRAK intercity or MBTA commuter), a passenger train operating on schedule will be given priority over a passenger train operating five (5) or more minutes late.

(c) MBTA, upon sixty (60) days written notice in advance thereof, shall have the right to amend and, in particular, to increase the level of its passenger service on CONRAIL Rail Properties beyond that existing as of the Effective Date of this Agreement, which amendments and increases in the levels of service shall be subject to the provisions of this Agreement, including, without limitation, Section 4.02(b), provided that the character, scheduling or extent of the passenger service shall not interfere unreasonably with CONRAIL's current or future uses of its Rail Properties.

(d) MBTA may operate its regular work or inspection trains and maintenance equipment as well as overhead or special or emergency trains on CONRAIL Rail Properties provided that such operations shall not interfere unreasonably with CONRAIL's current or future use of its Rail Properties.

#### Section 4.03. CONRAIL Responsibility for Certain Property

(a) Notwithstanding anything to the contrary in Sections 4.01 or 4.02, CONRAIL shall dispatch and control

all trains along the Rail Properties included within ADDENDA 1 and 2 and known collectively as the Boston Line -- to Framingham -- Mileposts 1.1 (West End of "COVE" Interlocking) to 22.4 in accordance with the provisions of this Section 4.03.

(b) The scheduling of MBTA passenger trains on the above-referenced property shall take preference over all other train scheduling. With respect to the matter of priorities of dispatching and control of train movements, it is agreed that passenger trains shall have priority over freight trains, and further, that with respect to priorities among passenger trains (AMTRAK intercity or MBTA commuter), a passenger train operating on schedule will be given priority over a passenger train operating five (5) or more minutes late.

(c) Without limitation of the foregoing, it is understood as follows:

(1) CONRAIL shall dispatch MBTA passenger trains for operations on Tracks 1 and 2 along the Boston Line, from the "COVE" Control Point in Boston at Milepost 1.1 to a point in Framingham at Milepost 22.4. Trains operating on the segment between Milepost 10.83 and Milepost 21.38 on Number 2 Track must be prepared to stop clear of passenger stations Wellesley Farms (Milepost 12.5), Wellesley Hills (Mile Post 13.5) and West Natick (Mile Post 19.9) in those instances when passenger



trains are scheduled and may be operating on Number 1 Track. Not later than thirty (30) days after receipt of written notification from CONRAIL, as required by Section 5.04(f) of this Agreement, that installation of pedestrian bridge at the aforementioned passenger stations has been completed in accordance with Exhibit 6, hereto attached, MBTA will replace removable fence sections with permanent contiguous sections, remove wooden crosswalks, and will, at such time, post adequate notices instructing passengers to use Pedestrian Bridges. Within thirty (30) days after posting such notices, CONRAIL shall consider that proper safeguards are provided, and trains will be free to pass passenger trains stopped in passenger stations while moving in either direction.

(2) CONRAIL shall dispatch and control MBTA passenger trains on the above-referenced Rail Properties in a manner which prevents delays to any such trains, it being understood that on-time performance is critical to the retention and expansion of MBTA's commuter service ridership. For purposes of this sub-section, "delay" shall be a delay of more than five (5) minutes in scheduled running time between West End of "COVE" Interlocking and Framingham Interlocking, but shall not include delays which are not under Conrail's control. Without limitation of any other

provision of this Agreement, it is further understood that in the event of a labor-management dispute which causes any disruption in maintenance or train control on said Rail Properties, and as long as any trains are being moved along such Properties during such dispute, CONRAIL shall use its best efforts to move MBTA passenger trains so as to prevent such delays, including, for example, using CONRAIL supervisory or management personnel as necessary.

(d) Except to the extent specifically provided to the contrary in this Section 4.03, all other provisions of this ARTICLE 4 shall apply to the above-referenced Rail Properties.

#### Section 4.04. General Provisions

(a) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars or equipment in the possession of or operated by or on behalf of one of the parties and includes such trains, locomotives, cars or equipment which are owned by, leased to, or the responsibility of such party.

(b) User shall comply with the provisions of applicable federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety

of its trains, locomotives, cars and equipment when such trains, locomotives, cars and equipment are being operated over the Owner's Rail Properties. User shall indemnify, protect, defend, and save Owner and its officers, agents, and employees harmless from all fines, penalties, and liabilities imposed upon Owner under such laws, rules, and regulations by any public agency, authority or court having jurisdiction in the premises, when the imposition of same is attributable to the failure of User to comply with its obligations in this regard.

(c) In its use of the Rail Properties, User shall comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotives, cars and equipment over the Rail Properties shall be subject at all times to the orders of the transportation officers of Owner.

(d) User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Rail Properties qualified for operation thereover. User shall compensate Owner for any and all direct costs incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be

properly qualified for operation as herein contemplated, provided that Owner shall not be required to administer more than three qualifying attempts for any such employee.

(e) In the event Owner conducts an investigation or hearing concerning the violation of any operating rule or practice of Owner by an employee or employees, except officers, of User, User shall be notified in advance of any such investigation or hearing and such investigation or hearing may be attended by any official designated by User and shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to said employee or employees.

(f) Owner shall have the right to exclude forthwith from the Rail Properties any employee of User, except officers, which the Owner determines, based on the investigation or hearing described above, to be in violation of Owner's rules, regulations, orders, practices or instructions issued by timetable or otherwise, provided that Owner may exclude any employee of User (except officers) from the Rail Properties prior to such determination for alleged violations of Owner's rules regarding use of intoxicating beverages or drugs, or for alleged insubordination. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses arising from such exclusion.

(g) If by reason of any mechanical failure or any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by Owner on the Rail Properties, or if in emergencies crippled or otherwise defective cars are separated from User's trains on the Rail Properties, Owner shall have the option of allowing the User to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Rail Properties or the Owner may perform or arrange for the performance of the necessary functions provided that if Owner elects to perform or arrange for performance of such functions, Owner shall do so as expeditiously as possible. User shall reimburse Owner for direct costs incurred in rendering any such assistance.

(h) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Rail Properties, such work shall, at the option of the Owner, be done by the User or the Owner or by the parties' respective contractors. User shall reimburse Owner for direct costs incurred in rendering any such assistance.

(i) It is understood and agreed that neither party shall charge or seek payment from the other for the performance of the party's responsibility for dispatching or control of trains or equipment as set forth in this Agreement beyond the charges or payments for which the parties are otherwise responsible pursuant to ARTICLE 6.

(j) Subject to the provisions of Sections 4.03, 5.04, and 9.03, and notwithstanding the definitions of "Owner" and "User" as set forth at ARTICLE 2, CONRAIL, shall be considered "Owner" and MBTA "User" for purposes of this Section 4.04 with reference to the Rail Properties referred to in Section 4.03.

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ARTICLE 5.

MAINTENANCE AND CONSTRUCTION

Section 5.01. MBTA Rail Properties

(a) Nothing in this Agreement shall derogate from MBTA's right solely to perform all maintenance, construction, alterations or improvements of any kind which are determined to be necessary by MBTA with respect to its Rail Properties or with respect to its own operations thereon. Such work shall be performed by MBTA at its own expense except as provided in paragraph (d) below, and in Sections 5.02 and 5.04.

(b) In addition to maintenance or other work performed by MBTA on its Rail Properties for its own account, MBTA agrees to perform maintenance work on CONRAIL's account with respect to CONRAIL's freight operations on Category A MBTA Rail Properties in accordance with the FRA Track Safety Regulation classification listed in ADDENDUM 1 and for the compensation set forth in ARTICLE 6. If at any time CONRAIL determines that such maintenance work has not been performed by MBTA at a level required under the FRA Standards for the class of track in question, CONRAIL shall notify MBTA in writing and MBTA shall within thirty (30) days of receipt of such notice take such action as may be necessary to bring such track to the standard so required.

If CONRAIL desires construction, alterations or improvements on MBTA Rail Properties it shall submit a request to MBTA in writing which specifies the work which CONRAIL wants MBTA to perform on CONRAIL's account. Subject to agreement by the parties on apportionment of the costs of such improvements, the MBTA shall perform such work, or, if MBTA elects, allow CONRAIL, at its sole expense to enter upon such MBTA Rail Properties to perform such work.

(c) Without limiting the generality of the foregoing, MBTA (1) shall have the right exclusively to secure such approvals of regulatory or governmental bodies for such work as may be necessary, including, without limitation, the Interstate Commerce Commission, FRA and Massachusetts Department of Public Utilities, and no approval of CONRAIL shall be required for the performance of any work on MBTA Rail Properties except as may be expressly provided herein; and (2) shall perform such work in accordance with the standards applicable to a particular property, as designated in ADDENDUM 1, under the classification set forth in said ADDENDUM and subject to the terms and provisions set forth in applicable FRA Track Safety Regulations.

(d) (1) ~~With respect to the facility known as~~  
~~Drum Point T-2~~ located in the vicinity of the Mystic River on the ~~East~~ Main Line at MP 7.22, the parties ~~agree that CONRAIL~~ shall pay to MBTA one-third (1/3) of the



annual costs of operations and maintenance of Drawbridge 7 for the period commencing on the Effective Date and ending on the date on which CONRAIL's use of such facility ceases, as such date is specified in a written notice by CONRAIL to MBTA in advance thereof, or on December 31, 1988, whichever date is earlier (called in this paragraph (d) the "applicable period"). MBTA shall provide to CONRAIL within sixty (60) days following the close of each calendar quarter a statement showing the maintenance cost for such facility in accordance with accounting standards under the Interstate Commerce Commission Uniform System of Accounts, and the amount of CONRAIL's share of same as provided above. CONRAIL shall pay such amount to MBTA within thirty (30) days of receipt of such statement, which payment shall be additional to the payments otherwise required under ARTICLE 6.

(2) In consideration of this Agreement and for other good and valuable consideration to be paid to CONRAIL by MBTA as provided below, CONRAIL agrees to convey to MBTA such parcel(s) of real property on the Grand Junction Secondary Branch (duly authorized and executed in a form substantially equivalent to that attached hereto at EXHIBIT 1) as may be necessary to permit construction of a new bridge to replace said Drawbridge 7, provided that within a reasonable time following the execution of this Agreement, the parties have agreed on the fair value to be

paid by MBTA for such parcel(s), and the other appropriate terms and conditions of such transfer.

(e) With respect to a facility to be constructed in the vicinity of South Station, Boston, and known as the South Station WYE connector, the parties agree that in consideration of this Agreement, including, without limitation, Section 3.01(d), and for other good and valuable consideration, receipt of which is acknowledged by the parties, (1) MBTA will construct without further charge to CONRAIL such WYE connector and, upon completion of same, will permit CONRAIL to use same in accordance with this Agreement, and (2) CONRAIL, subject to Section 3.01(d) hereof, hereby releases and assigns any and all rights it may hold to enter upon or use the South Station terminal area or the approaches thereto, except that CONRAIL may park in said area its business cars at such reasonable times and locations therein as may be approved by MBTA, which approval shall not be unreasonably withheld, as evidenced by the instruments duly authorized and executed in a form substantially equivalent to that attached hereto at EXHIBIT 2.

Section 5.02. Category B MBTA Rail Properties

(a) Notwithstanding the provisions of Section 5.01, CONRAIL shall have responsibility and control of, and shall perform at its sole expense and with the prior writ-

ten concurrence of MBTA, which concurrence shall not be unreasonably withheld, all such maintenance, construction, reconstruction, alterations or improvements on MBTA Rail Properties within Category B at ADDENDUM 1, including, without limitation, construction, reconstruction, alteration or improvement of any yard, track, signal, communication or other solely freight facility on such Rail Properties, provided that if CONRAIL reasonably determines that any bridge facility is in need of major structural repair, reconstruction or replacement, without which the continued utility of such facility cannot be maintained in accordance with the standards applicable to the Rail Property of which such facility is a part, as designated at ADDENDUM 1, Category B, CONRAIL shall promptly notify MBTA of such determination in writing and shall either (1) undertake such repair, replacement or reconstruction at its sole expense and in accordance with such standards, or (2) terminate its use of that portion of the Rail Property occupied by such bridge facility, in which event the parties shall promptly execute an appropriate amendment to this Agreement which reflects the deletion of such portion of Rail Property and which shall include provisions requiring CONRAIL to take reasonable steps: (i) to secure such bridge facility; (ii) to prevent unauthorized access thereto; and (iii) to protect against loss, damage, injury or death to third

parties or to the property of such third parties as a result of the termination of such use of such facility by CONRAIL.

(b) It is understood that without limitation of the foregoing, CONRAIL shall, in each particular instance, (1) obtain MBTA's approval in writing of any removal of, retirement in place of, addition to, or modification of, track, signal systems, buildings or equipment on such Rail Properties including, without limitation, approval of applications to the FRA Railway Safety Board, and that upon any such removal, all such items shall remain the property of MBTA and shall be delivered to same at a materials yard designated by MBTA within the MBTA's operating area at CONRAIL's sole expense and risk; (2) during the period of its performance of responsibilities hereunder for Category B MBTA Rail Properties, perform all responsibilities and obligations of "track owners" under the FRA Track Safety Regulations, and shall do all things necessary to apply for and obtain, subject to MBTA's approval in writing, any approvals of regulatory or governmental bodies (including the Interstate Commerce Commission, FRA and Massachusetts Department of Public Utilities) which may be required in the performance of such responsibilities and obligations, at CONRAIL's sole cost and expense, including, without limitation, filing the petition called for under FRA Track

Safety Regulations, Section 213.5; provided that any "RS&I" applications, so-called, to the FRA shall be jointly filed; and (3) perform all such work as provided in Section 5.02(a) in accordance with the standards applicable to a particular property, as designated in ADDENDUM 1, Category B, under the classification set forth in said ADDENDUM and subject to the terms and provisions set forth in the applicable FRA Track Safety Regulations.

(c) All licenses, easements or other rights or interests for purposes of crossing at grade, over or under or otherwise of using the MBTA Rail Properties referred to in this Section 5.02, including, without limitation, air, subsurface, transverse, longitudinal or other rights or interests for development, commercial or other purposes, shall be subject to the following understandings:

(1) All licenses, permits or other non-property rights or interests with respect to such Rail Properties (hereafter in this paragraph called "licenses") shall be issued by CONRAIL subject to the review and approval in advance of MBTA, except as provided expressly below, and all revenues paid by the licensee thereof to CONRAIL shall be shared with MBTA as provided in sub-paragraphs (3) and (4) below.

(2) CONRAIL may issue licenses for transverse pipe and wire occupancies without prior review or approval

of MBTA, subject to the provisions of sub-paragraph (3) below.

(3) With respect to licenses issued under sub-paragraph (2) above, CONRAIL shall charge the preparation, issuance and rental fees as set forth in EXHIBIT 3, "RENTAL SCHEDULE FOR UTILITY OCCUPATIONS OF CONSOLIDATED RAIL PROPERTY", dated January 1, 1985, and as amended from time to time in accordance with the provisions of Section 12.10 hereof. To the extent of revenue from payments by such licensee, CONRAIL and MBTA shall share such revenues as follows:

(1) CONRAIL shall be reimbursed one-hundred (100) percent of the Standard Preparation Fee as shown at said EXHIBIT 3.

(2) If annual rental fees are paid with respect to such license, CONRAIL shall be paid the Base Rate. The Base Rate shall be \$100 dollars, and shall be adjusted annually based on the Consumer Price Index, for Urban Wage Earners and Clerical Workers (CPI-W) (1967=100) specified for All Items-United States compiled by the Bureau of Labor Statistics of the United States Department of Labor, provided that the Base Rate shall not be less than \$100.

(3) CONRAIL shall be paid one-half of any revenues from payments by such licensee in excess of the

amount provided at clauses (i) and (ii) above, the remaining one-half share to be paid by CONRAIL to MBTA forthwith upon receipt from the licensee.

(4) With respect to licenses issued by CONRAIL other than those described at sub-paragraph (2), CONRAIL shall charge such amounts and shall share revenues from payments by any such licensee in accordance with such understandings as MBTA and CONRAIL may agree to in writing with respect to each such license, provided that to the extent of such revenues CONRAIL's share of same shall not be less than the amount referred to at clauses (i) and (ii) above.

(5) All applications for rights or interests described at this subsection with respect to the use of MBTA Rail Properties other than those expressly subject to sub-paragraphs (1) through (4) shall be submitted to MBTA for its approval and issuance.

(d) CONRAIL shall carry out its responsibilities under Section 5.02(a) in a manner which will not unreasonably interfere with any future passenger services which MBTA may undertake or authorize on MBTA Rail Properties which are designated as Category B properties at ADDENDUM 1 and whose status would change to Category A in accordance with Section 3.02 upon the institution of such services, or with MBTA passenger services then being provided on Category A MBTA Rail Properties which would otherwise be adverse-

ly affected by CONRAIL's activities under this Section 5.02.

(e) (1) In the event that MBTA initiates passenger service or CONRAIL discontinues freight service on any of the properties within Category B at ADDENDUM 1, and if it is determined that CONRAIL has failed, on or before the date of such discontinuance, or ninety (90) days after the date written notice is sent by MBTA to CONRAIL that it intends to initiate passenger service in joint use with CONRAIL on such property, to maintain such properties at, or to bring such properties to, the level of maintenance required under the FRA class designation shown at ADDENDUM 1 for such property (except with respect to the Middleboro Branch, Braintree to Campello, as to which the provisions of Section 5.02(e) (2) shall apply), MBTA shall have the right otherwise provided under Section 5.01 to perform such work, and to charge CONRAIL therefor, in which event CONRAIL shall reimburse such charges incurred by MBTA as a payment additional to those otherwise provided in ARTICLE 6. It is understood that all facilities or improvements thereto which are constructed by CONRAIL under Section 5.02(a), which are properly accounted for as a capital expense, and which can be removed without causing permanent damage to such Rail Property and without interfering with any use by MBTA of such Rail Properties, shall be the prop-



erty of CONRAIL and may be removed by CONRAIL at its sole expense in accordance with the foregoing. At MBTA's option, MBTA may require by written notice to CONRAIL and at CONRAIL's sole expense, that CONRAIL remove such facilities or improvements which are no longer used and restore the property to its pre-existing condition, and in the event such facilities or improvements are not so removed within ninety (90) days following the date of such notice, they shall be the property of MBTA.

(2) Notwithstanding the FRA class designation otherwise called for at Section 5.02(e)(1) above, the FRA class designation "Class III" shall apply for purposes of Section 5.02(e)(1) for the Middleboro Branch, Braintree to Campello.

#### Section 5.03. CONRAIL Rail Properties

(a) Nothing in this Agreement shall derogate from CONRAIL's right solely to perform all maintenance, construction, reconstruction, alterations, or improvements of any kind on CONRAIL Rail Properties, provided that such work shall be performed by CONRAIL subject to the provisions of this Agreement and at its sole expense. Without limiting the generality of the foregoing, CONRAIL shall (1) secure such approvals of regulatory or governmental bodies for such work as may be necessary, including, without limita-

tion, the Interstate Commerce Commission, FRA, and Massachusetts Department of Public Utilities, and no approval of MBTA shall be required in the exercise of such right or responsibility except as may be expressly provided herein; and (2) shall perform such work in accordance with the standards applicable to a particular property, as designated in ADDENDUM 2, under the classification and subject to the terms and provisions set forth in applicable FRA Track Safety Regulations.

(b) In addition to maintenance or other work performed by CONRAIL on its Rail Properties for its own account, CONRAIL agrees to perform maintenance work on MBTA's account with respect to MBTA's operations on CONRAIL Rail Properties in accordance with the FRA Track Safety Regulation classification listed in ADDENDUM 2 and for the compensation set forth in ARTICLE 6. If at any time MBTA determines that such maintenance work has not been performed by CONRAIL at a level required under the FRA Standards for the class of track in question, MBTA shall notify CONRAIL in writing and CONRAIL shall within thirty (30) days of receipt of such notice take such action as may be necessary to bring such track to the standard so required. If MBTA desires construction, alterations or improvements on CONRAIL Rail Properties it shall submit a request to CONRAIL in writing which specifies the work which MBTA

wants CONRAIL to perform on MBTA's account. Subject to agreement by the parties on apportionment of the costs of such improvements, CONRAIL shall perform such work, or, if CONRAIL elects, allow MBTA, at its sole expense to enter upon such Rail Properties to perform such work.

(c) CONRAIL shall perform its responsibilities under this Section with respect to its Rail Properties in a manner which does not interfere unreasonably with MBTA's passenger services, as provided as of the Effective Date of this Agreement, or as may be provided by MBTA in the future during the term hereof, as to which MBTA has given notice in writing to CONRAIL from time to time.

(d) MBTA shall operate, including provision of police protection, maintain and make any improvements or alterations it may determine to be necessary or appropriate on all passenger stations, platforms, overhead pedestrian bridges and other solely passenger facilities, at its sole expense.

#### Section 5.04. CONRAIL Responsibility for Certain Property

Without limitation of the provisions of this Agreement and notwithstanding any contrary provision thereof, the parties agree as follows with respect to the Rail Properties included within ADDENDA 1 and 2 and known collectively as the Boston Line - West End of "COVE" Interlocking to Framingham - Mileposts 1.1 to 22.4:

(a) CONRAIL shall maintain such Rail Properties in accordance with the provisions of this Agreement otherwise applicable thereto, including, without limitation, the FRA Track Safety standards shown in connection therewith at ADDENDA 1 and 2, and shall keep such properties reasonably clean and free from waste or debris.

(b) CONRAIL shall not perform programmed major maintenance (e.g. tie, rail or signal system replacement) in a manner which unreasonably interferes with MBTA commuter service. Without limitation it is understood that any such maintenance which is conducted in a manner which delays MBTA morning or evening services during peak hours for more than ten (10) minutes for any train, unless MBTA otherwise agrees in writing prior to the start of such maintenance, shall be considered unreasonable for purposes of this paragraph.

(c) On or before July 1, 1987, CONRAIL, at its sole expense, shall provide and install continuous welded rail in accordance with the specifications at EXHIBIT 4 and on the track sections shown thereon.

(d) On or before December 31, 1988, CONRAIL, at its sole expense, shall provide and install a Traffic Control System in accordance with the specifications at EXHIBIT 4 and on the track sections shown thereon.

(e) On or before July 1, 1987, CONRAIL, at its sole expense, shall make such improvements as may be necessary and appropriate to permit the operating speeds shown on EXHIBIT 5, and on the track sections shown thereon.

(f) On or before December 31, 1988, CONRAIL shall provide and install pedestrian bridges, in accordance with the provisions of EXHIBIT 6 and at its sole expense, except as otherwise provided in said EXHIBIT. CONRAIL shall notify MBTA in writing immediately upon completion of such installation.

(g) With reference to such Rail Properties from Riverside at Milepost 10.83 to Framingham at Milepost 21.38, CONRAIL shall, in each particular instance, (1) obtain MBTA's approval in writing of any removal of, retirement in place of, or addition to, or modification of, track, signal systems, buildings or equipment on such Rail Property, including, without limitation, approval of applications to the FRA Railway Safety Board, and that upon any such removal, all such items shall remain the property of the MBTA and shall be delivered to same at a materials yard designated by MBTA within MBTA's operating area at CONRAIL's sole expense; and (2) perform all responsibilities and obligations of "track owners" under the FRA's Track Safety Regulations, and shall do all things necessary

to apply for and obtain, subject to MBTA's approval in writing, any approvals of regulatory or governmental bodies (including the Interstate Commerce Commission, FRA and Massachusetts Department of Public Utilities) which may be required in the performance of such responsibilities and obligations, at CONRAIL's sole expense, including, without limitation, filing the petition called for under FRA Track Safety Regulations, Section 213.5 provided that any "RS&I" applications, so-called, to the FRA, shall be jointly filed.

(h) The provisions of paragraph (c) of Section 5.02 shall apply to the MBTA Rail Property referred to at this Section 5.04, namely, the Boston Line, Milepost 10.83 to Milepost 22.4.

Section 5.05. Installation of Industrial Sidetracks

(a) In addition to, and without limitation of, the requirements set forth above in this ARTICLE 5, the provisions of this Section 5.05 shall apply to the construction, alteration, repair or removal of industrial sidetracks (referred to in this Section as "sidetracks") located on the Rail Properties.

(b) User shall submit to Owner for its review and written approval (1) the engineering plans and specifications for such work and (2) the applications by User or the industrial user for licenses from Owner to use Owner's Rail Properties for sidetrack purposes. If the plans and specifications are in accordance with the general specifications for sidetrack construction adopted from time to time by Owner, the Owner's approval thereof shall not be unreasonably withheld or delayed.

(c) User shall have full responsibility for negotiations with industrial users in connection with the development of such plans and specifications and with the preparation of licenses for submission to Owner.

(d) The license between Owner and User or the Owner and the industrial user shall define the location and use of the sidetrack, the use and maintenance charge, the term of the license, the obligation to remove the sidetrack under certain circumstances, and such other terms as may be required by the Owner, including, without limitation, provi-

sions for indemnification of Owner for liability for death or injury to persons or loss or damage to property with respect to the construction, alteration, repair, removal or use of such sidetrack. In the event the license is between Owner and User, the term shall not be greater than the term of this Agreement under Section 9.01 and shall be subject to the termination provisions of ARTICLE 9 of this Agreement unless the parties otherwise expressly agree.

(e) Unless otherwise agreed, all materials for installation of new sidetracks and for alteration or repair of existing sidetracks will be new, be built to specifications approved by the Owner, and shall be supplied by User to Owner at a location to be agreed upon by the parties.

(f) Except as provided below at paragraph (h), construction, alteration, repair, or removal of sidetracks on the Owner's Rail Properties shall be performed by Owner's employees or contractors at User's sole cost and expense.

(g) Except as provided in paragraph (h) below, following Owner's written approval of plans and specifications for the construction, alteration, removal or repair of sidetracks on Owner's Rail Properties, the Owner shall, within 30 days, submit a force account estimate for work to be done and a time and payment schedule which, when approved by User, will constitute an order to begin work.



Payment shall be required in advance of the performance of the work either, at the election of the Owner, in one payment or a series of payments. If it appears that the cost of such work will exceed the estimate, Owner will notify User to secure authority for such additional costs. Upon completion of work done on behalf of User by Owner, User shall promptly pay any authorized costs which exceed the advance payments, provided, however, that Owner shall not be authorized or obligated to incur costs in excess of those approved in writing by User. The unexpended balance of any advance payments shall be returned by Owner to User promptly upon completion of work.

(h) Construction, alteration, removal, or repair of sidetracks on Category B MBTA Rail Properties shall be performed in accordance with plans and specifications (approved in advance in writing by MBTA) by CONRAIL employees or contractors at CONRAIL's sole cost and expense.

(i) Maintenance of sidetracks on the Owner's Rail Properties shall be performed by Owner's employees or contractors at User's sole cost and expense, except that maintenance of sidetracks on Category B MBTA Rail Properties shall be performed by CONRAIL employees or contractors at CONRAIL's sole cost and expense. It is expressly understood that the compensation charged to the parties under ARTICLE 6 does not cover such cost and expense, which shall

be paid as additional compensation in accordance with the provisions of this Section 5.05.

(j) Owner shall bear no portion of the cost or expense of and shall have no responsibility with respect to construction and maintenance of that portion of any sidetracks located off the Owner's Rail Properties.

(k) In the event that use of any sidetracks located on Owner's Rail Properties has ceased for a period of twenty-four (24) months, Owner shall have the option, upon ninety (90) days' written notice to User, to remove the sidetrack and any other facilities or appurtenances connected therewith which are located upon owner's Rail Properties.

(l) In the event of removal of a sidetrack located on Owner's Rail Property, User shall be entitled to the return of all sidetrack materials which User provided to Owner or otherwise installed in accordance with this Section, which are properly accounted for as a capital expense, which can be removed without causing permanent damage to owner's Rail Property, and without interfering with any use by Owner of such Rail Property, provided that the cost of removal is borne by User. All other materials shall be removed by Owner at Owner's expense and shall be retained by Owner. Owner shall notify User of the removal and availability for disposition of all materials belonging to User hereunder.

ARTICLE 6  
COMPENSATION

Section 6.01. Base Charge

(a) Subject to revision from time to time as provided in Section 6.03, the Base Charge for the use by CONRAIL of the MBTA Rail Properties listed in ADDENDUM 1, Category A, and for the use by MBTA of the CONRAIL Rail Properties listed in ADDENDUM 2 shall be as follows:

Number Car <u>Miles Annually</u>	Car Mile <u>Charge</u>
First Eight Hundred Thousand	20¢
Over Eight Hundred Thousand	15¢

(b) Notwithstanding the foregoing, User shall not be obligated to pay to Owner compensation as otherwise provided with respect to the MBTA Rail Property known as the East Route Main Line from Milepost 1.36 to Milepost 2.75, or the CONRAIL Rail Property known as the Grand Junction Secondary from Milepost 0.0 to Milepost 2.7 within which Termini Drawbridge #7 and/or the replacement bridge for Drawbridge #7 is, or will be, located.

Section 6.02. ~~Payment~~

(a) User will pay to Owner an amount computed by multiplying the Base Charge, as revised from time to time pursuant to Section 6.03, by the number of car miles trav-

elled on each segment of the Rail Properties of the Owner in any calendar month (the "applicable month").

(b) The User shall be responsible for calculating the amount of the payment due to the Owner for the applicable month in accordance with this Section, and shall pay same within ninety (90) calendar days after the close of such month. Any such payments shall be accompanied by a statement prepared by User which shall show the number of car miles travelled during the applicable month by each segment on the Owner's property.

Section 6.03. Revision of the Base Charge.

Beginning July 1, 1987, and each July thereafter, the Base Charge shall be increased or decreased on a cumulative basis by the same percentage by which the cost of labor and material, excluding fuel, as reflected in the Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Recovery Index" and supplements thereto, issued by the Association of American Railroads (or, if such index ceases to be published a generally recognized index which is substantially equivalent to same), has increased or decreased in the preceding calendar year. Such increase or decrease will become effective July 1st of each calendar year.

Section 6.04. Special Provisions for Certain Property

Notwithstanding the foregoing, and subject to the provisions of Sections 4.03, 5.04 and 9.03, MBTA shall be considered "User" and CONRAIL "Owner" of the MBTA Rail Property identified at ADDENDUM 1, Category A as Boston Line - Riverside to Framingham - Milepost 10.83 to Milepost 21.38 for purposes of this ARTICLE 6.

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## ARTICLE 7

### LIABILITY INDEMNIFICATION

#### Section 7.01. General

(a) Financial responsibility for liability for personal injury or property damage which may result from activities conducted hereunder shall be allocated as provided in this ARTICLE 7.

(b) For the purpose of this ARTICLE 7, the following terms shall have the meanings provided below unless otherwise expressly provided in this ARTICLE:

"CONRAIL Employees", the employees and agents of CONRAIL, and CONRAIL's operating contractors and said contractors' employees.

"MBTA Employees", the employees and agents of MBTA, and MBTA's operating contractors and said contractors' employees.

"Person", any person, including, without limitation, passengers and third parties, as well as the respective employees, agents or contractors of the parties.

(c) For the purpose of this ARTICLE 7, the term "contractor" shall not be deemed to include the National Railroad Passenger Corporation in its capacity as operator of rail services on its own behalf.

#### Section 7.02. CONRAIL Employees

CONRAIL shall defend, indemnify, and save harmless MBTA and MBTA Employees, irrespective of any negligence or fault of, or control by, same, or howsoever the same shall occur or be caused, from any and all liability, damage, or expense of any kind whatsoever, including reasonable attorneys fees, arising out of injury to or death of any CONRAIL Employee or other contractor of CONRAIL, or arising out of loss of, damage to, or destruction of any property of any such CONRAIL Employee or contractor. CONRAIL employees who are involved in CONRAIL's provision of services to MBTA under this Agreement shall be regarded as CONRAIL Employees, and not as employees of MBTA.

#### Section 7.03. MBTA Employees

MBTA shall defend, indemnify, and save harmless CONRAIL and CONRAIL Employees, irrespective of any negligence or fault of, or control by, same, or howsoever the same shall occur or be caused, from any and all liability, damage, or expense of any kind whatsoever, including reasonable attorneys fees, arising out of injury to or death of any MBTA Employee or other contractor of MBTA, or arising out of loss of, damage to, or destruction of any property of any such MBTA Employee or contractor. MBTA Employees who are involved in MBTA's provision of services to CONRAIL under this Agreement shall be regarded as MBTA Employees and not as employees of CONRAIL.

#### Section 7.04. CONRAIL Property

CONRAIL shall defend, indemnify, and save harmless MBTA and MBTA Employees, irrespective of any negligence or fault of, or control by same, or howsoever the same shall occur or be caused, from any and all liability, damage or expense of any kind whatsoever, including reasonable attorneys fees, arising out of loss of, damage to, or destruction of any property, real or personal, owned by, leased to or otherwise under the control of CONRAIL, including, without limitation, CONRAIL trains, loadings and all other contents thereof and the MBTA Category B Rail Properties and the MBTA Rail Properties known as the Boston Line -- Riverside to Framingham -- Mileposts 10.83 to 21.38, provided that such loss, damage or destruction shall have occurred during the period of CONRAIL's responsibility therefor pursuant to Sections 4.03, 5.02, 5.04 and 9.03, and regardless whether such liability, damage or expense arises before or after the date on which CONRAIL may cease to be responsible therefor in accordance with the provisions of Section 9.03 or the provisions regarding the MBTA Category B Properties.

#### Section 7.05. MBTA Property

MBTA shall defend, indemnify, and save harmless CONRAIL and CONRAIL Employees, irrespective of any negligence or fault of, or control by same, or howsoever the same shall occur or be caused, from any and all liability,



damage, or expense of any kind whatsoever, including reasonable attorneys fees, arising out of loss of, damage to, or destruction of any property owned by, leased to, or otherwise under the control of MBTA, including without limitation, MBTA trains and all other contents thereof, but expressly not including the MBTA Rail Properties described at Section 7.04, above, with respect to the loss, damage or destruction referred to in such Section.

Section 7.06. Liabilities Arising from Hazardous

Materials

Any other provision of this ARTICLE 7 to the contrary notwithstanding:

(1) CONRAIL shall defend, indemnify and save harmless MBTA and MBTA Employees, irrespective of any negligence or fault of, or control by, same, or howsoever the same shall occur or be caused, from any and all liability, damage, or expense of any kind whatsoever, including reasonable attorneys fees, arising out of injury to or death of any Person, or arising out of loss of, damage to, or destruction of the property of MBTA, MBTA Employees or any Person, resulting from the transportation or use of hazardous materials by CONRAIL, CONRAIL Employees or other contractors of CONRAIL (other than MBTA); and

(2) MBTA shall defend, indemnify and save harmless CONRAIL and CONRAIL Employees, irrespective of any

negligence or fault of, or control by same, or howsoever the same shall occur or be caused, from any and all liability, damage, or expense of any kind whatsoever, including, reasonable attorneys fees, arising out of injury to or death of any Person, or arising out of loss of, damage to, or destruction of the property of CONRAIL, CONRAIL Employees or any Person, resulting from the transportation or use of hazardous materials by MBTA, MBTA Employees or other contractors of MBTA (other than CONRAIL.)

For purposes of this Section, hazardous materials shall be deemed to include, but not be limited to, all materials listed by the United States Department of Transportation in the Hazardous Materials Table found at 49 CFR 172.01, as the same may be amended from time to time, without regard to any special designation or limitation noted in the Table.

#### Section 7.07. Other Apportionment of Liability

Except as otherwise provided in Section 7.01 through 7.06, of this ARTICLE 7:

(a) CONRAIL shall defend, indemnify, and save harmless MBTA and MBTA Employees from any and all liability, damage, or expense of any kind whatsoever, including reasonable attorneys fees, arising out of injury to or death of any Person, or arising out of loss of, damage to, or destruction of any property of any Person, resulting

from the negligence or fault of CONRAIL, CONRAIL Employees or other contractors of CONRAIL (other than MBTA).

(b) MBTA shall defend, indemnify and save harmless CONRAIL and CONRAIL Employees from any and all liability, damage, or expense of any kind whatsoever, including reasonable attorneys fees, arising out of injury to or death of any Person, or arising out of loss of, damage to, or destruction of any property of any Person, resulting from the negligence or fault of MBTA, MBTA Employees or other contractors of MBTA (other than CONRAIL).

(c) If liability, damage or expense of any kind whatsoever arises as a result of the negligence or fault of both parties, or their respective Employees or other contractors, the obligations of the parties to indemnify each other pursuant to Sections 7.07(a) and 7.07(b), above, shall be apportioned on the same basis as would arise under applicable common law and statutory principles of law concerning tort liability, contribution and indemnification, provided, that for the purposes of this contractual provision insofar as it relates to the right to contribution of one party to another, and notwithstanding any contrary principle of law, the party against whom contribution is sought shall be responsible for the negligence or fault of its Employees or other contractors.

## ARTICLE 8

### DISPUTE RESOLUTION

#### Section 8.01. Informal Procedures

(a) Whenever an issue of interpretation or application of this Agreement arises between the parties, the parties agree to make every possible effort to resolve the matter expeditiously through the procedures set forth in this Section, and without resort either to arbitration (see Section 8.02) or to other remedies available under this Agreement pursuant to Section 9.03.

(b) For technical operating issues, the parties will establish an operating committee consisting of one or more representatives from each party. The operating committee shall meet as often as required by the MBTA Director of Rail Operations and CONRAIL General Manager-Northeast Region. Either party may submit issues to the operating committee for review and the operating committee shall give its opinion on any issue within a reasonable time but not later than fifteen (15) working days from the date of the meeting at which the issue was presented.

(c) In the event any party believes that the other party is in default regarding a matter of substantial importance which, if not corrected immediately, will substantially prejudice the party's ability to protect its interests under this Agreement or will cause other

irreparable injury, such party may request a meeting to be held between the General Manager of MBTA and the General Manager-Northeast Region for CONRAIL at a convenient time and place within seven (7) working days of the request. The other party shall forthwith respond to the request and the meeting shall be held within the above time period.

(d) If a dispute remains outstanding following the use of the appropriate method or methods outlined above, the aggrieved party shall notify the other party in writing of the nature of the alleged default, the grounds why the other party is responsible, and the specific relief desired. Within ten (10) business days of the receipt of such notice, such other party shall respond in writing and shall either propose an adequate course of action to correct such default within a stated period of time, or provide a detailed objection to the grounds listed in such notice. In the event that the parties agree on the course of action proposed by the responding party, or an alternative course of action to correct such default, the parties shall countersign a letter incorporating such agreed upon course of action or, where applicable, shall agree to an amendment to this Agreement. In the event that such letter agreement or amendment is not executed within thirty (30) days of receipt of such notice (originally sent by the aggrieved party), or within such other reasonable period of time as the parties may agree, the aggrieved party may,

except as otherwise provided in this Agreement, proceed with formal methods of dispute resolution outlined in Section 8.02 or may proceed with other remedies available under this Agreement.

#### Section 8.02. Arbitration

(a) Arbitration for purposes of resolving a dispute shall follow exhaustion of the informal procedures under Section 8.01 and shall be available only at the option of both parties. If a party elects arbitration and the other party declines to have the dispute resolved by arbitration under this Section, or if the parties undertake arbitration and one of the parties unreasonably delays the expeditious conclusion of same, the aggrieved party may proceed with other remedies available under this Agreement.

(b) If arbitration is undertaken, the matter in dispute shall be submitted to disinterested arbitrators, one of whom shall be appointed by MBTA and the other by CONRAIL. If the two arbitrators so chosen cannot agree, they shall select a third, disinterested arbitrator ("neutral arbitrator"). In the event that the arbitrators are unable to agree upon the appointment of a neutral arbitrator, the neutral arbitrator shall be appointed, upon the application of either party hereto and upon reasonable notice to the other party, by the American Arbitration Association.

(c) If either party claims the arbitrators' decision is based upon an error of law, it may within thirty (30) days after receipt of such decision, institute an action at law to determine such legal issue. For this purpose, the sufficiency of the evidence to support the arbitrators' conclusions of law shall be considered a question of law.

(d) The parties may elect through mutual agreement to have the dispute presented to one arbitrator.

(e) All arbitrations hereunder shall be conducted in accordance with the rules and procedures of the American Arbitration Association unless the parties otherwise agree.

(f) During the pendency of such arbitration proceedings, the operations to be conducted, and physical plant to be used under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted and used in the manner and form existing prior to the time such controversy arose, unless the arbitrators shall make a preliminary ruling to the contrary.

(g) Each party hereto shall bear the costs and expenses incurred by it and by the arbitrator it has appointed under paragraph (b) in connection with such arbitration and both parties shall share equally the costs and expenses attributable to the services of the single arbitrator which they may jointly appoint under paragraph (d) or of the third arbitrator which may be appointed under paragraph (b).

## ARTICLE 9

### DURATION OF AGREEMENT AND DEFAULT

#### Section 9.01. Term

The effective date of this Agreement shall be July 1, 1985, and the term hereof, unless sooner terminated as provided below, shall continue from that date until December 31, 2015. Thereafter, this Agreement may be extended for one successive thirty (30) year term at the election of both parties, provided that both parties execute a written election to renew not later than June 30, 2015.

#### Section 9.02. MBTA Budget Approval

This Agreement is subject to annual budget approval by the MBTA Advisory Board of budgetary provisions for rail costs or services under Mass. General Laws, Chapter 161A, Section 5(i). In the event that financial participation by MBTA in costs or services related to any or all of the Rail Properties is not approved, MBTA shall provide written notice of same to CONRAIL, which notice shall specify the end of the fiscal period for which an approved budget exists. Effective at the end of such fiscal period (called for purposes of this paragraph the "Termination Date") the provisions of this Agreement shall terminate and shall be null and void and without further effect except that claims or disputes of the parties with respect to mat-



ters arising under this Agreement prior to such Termination Date shall be governed by this Agreement and except that CONRAIL may elect to continue to use MBTA Rail Properties in accordance with such reasonable terms and conditions as the parties may agree upon in advance of such Termination Date, provided that such terms and conditions shall include a provision whereby CONRAIL, on and after such Termination Date, shall bear the entire risk of damage, loss, liability or costs associated with such Rail Properties and shall indemnify and hold harmless MBTA, its employees, agents, contractor and operating contractors, from any and all liability, damages, losses, expenses and claims of any kind whatsoever and however the same shall occur, including reasonable attorneys' fees, arising with respect to such Rail Properties, unless such liability, damages, losses or claims are caused solely by the fault or negligence of MBTA, its employees, contractors or operating contractors.

**Section 9.03. Default**

(a) Each of the following shall constitute an Event of Default under this Agreement:

(i) Any late payment of compensation under ARTICLE 6 or other provisions of this Agreement remaining outstanding for more than four (4) months;

(ii) The commencement of any proceeding by or against either party which might result in any modifica-

tion of the obligations of such party hereunder under any bankruptcy, insolvency or similar law, unless all of the obligations of such party under this Agreement shall have been duly assumed by a trustee or successor to such party within sixty (60) days after such proceeding shall have commenced;

(iii) The failure to perform any covenant or obligation pursuant to Sections 4.03 or 5.04, which failure shall have continued for more than thirty (30) days following the date of the notice sent pursuant to Section 8.01(d); or

(iv) The failure to perform any other covenant or obligation in this Agreement, which failure shall have continued for more than thirty (30) days following the date of the notice sent pursuant to Section 8.01(d).

(b) If an Event of Default shall occur, the party not in default ("aggrieved party"), upon written notice to the defaulting party, may make a Declaration of Default hereunder, and may exercise any or all of the following remedies;

(i) Terminate this Agreement by and upon sixty (60) days written notice to the defaulting party;

(ii) If the Event of Default is the failure of CONRAIL to perform any covenant or obligation pursuant to Sections 4.03 or 5.04, MBTA may, upon written notice to CONRAIL which shall be not less than sixty (60) days,

assume the dispatching, train control and maintenance responsibilities referred to at said sections, for that segment of track from Milepost 10.83 to Milepost 21.38, it being understood that CONRAIL shall pay to MBTA one-half of the actual labor and material costs, including fringe benefits, overhead and material additives at the rates therein certified to be in effect by MBTA's Director of Rail Operations, incurred by MBTA or its operating contractor to provide for such transfer, provided that MBTA shall submit a suitable statement in accordance with the Interstate Commerce Commission Uniform System of Accounts which show such costs, and provided further that CONRAIL's one-half share of such costs hereunder shall not exceed the amount of \$50,000, as said amount may be revised on an annual basis in accordance with the index and procedures specified in Section 6.03;

(iii) Continue this Agreement in effect notwithstanding the Event of Default and set off against amounts owed to the defaulting party any late payments duly noticed by the aggrieved party in the Declaration of Default; or

(iv) Substitute for the remedy described at paragraph (iii) above, the remedy described at Paragraph (i); and

(v) Regardless whether a remedy described above is exercised, pursue any other remedy at law or in equity in any court of competent jurisdiction.

(c) Notwithstanding any contrary provisions of Section 8.01(d) or of Section 9.03(a) or (b), if any party believes that the other party is in default regarding a matter of substantial importance which, if not corrected immediately, will substantially prejudice the aggrieved party's ability to protect its interests under this Agreement or will cause other irreparable injury, the aggrieved party may file immediately any and all pleadings which it deems appropriate before any court of competent jurisdiction to secure judicial review of such matter, accompanied by an affidavit demonstrating the nature of the need for immediate relief, without following the provisions of Section 8.01(d) and without waiting for the thirty (30) day period specified therein or in Section 9.03(a) or (b) to expire. The parties agree that to the extent permitted by the rules of procedure applicable to judicial review in the court or courts in which proceedings under this Agreement are invoked, pursuit of judicial review as described in this Paragraph shall be without prejudice to the pursuit of other remedies described in this Section, including, without limitation, pursuit of judicial relief as to other issues between the parties under this Agreement.

(d) An Event of Default shall not be waived or satisfied by failure of a party to make a Declaration of Default with respect thereto, nor shall a failure of a party to make a Declaration of Default be considered a waiver

of any other remedies available to it under this Agreement  
or otherwise.

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## ARTICLE 10

### ABANDONMENT OF FREIGHT OPERATIONS AND TRANSFER OF PROPERTY RIGHTS

#### Section 10.01. Abandonment of CONRAIL Rail Properties

(a) CONRAIL shall not file with the Interstate Commerce Commission an application for abandonment of any of its Rail Properties under this Agreement nor shall CONRAIL otherwise agree with any person to transfer or dispose of any such properties or any interest therein without first providing written notice not less than sixty (60) days in advance of same to MBTA.

(b) In the event that CONRAIL shall abandon its freight operation over any of the Rail Properties listed at ADDENDUM 2, MBTA may, at its sole discretion and upon written notice to CONRAIL, assume responsibility for and control of such Rail Properties and may maintain same at its sole cost and expense, for such period of time as MBTA may elect, and during such period MBTA shall not be obligated to pay the compensation otherwise assessable on MBTA with respect to its use of such Rail Properties under ARTICLE 6. Except that MBTA's rights under this Section shall be subject to (i) CONRAIL's rights and obligations to transfer or dispose of Rail Property and (ii) the rights and interests that may be acquired by a third party if and to the extent they arise pursuant to 49 U.S.C. Section 10905 or any similar statute.

Section 10.02. Transfer of Easements

The parties agree to grant to each other, at a closing to be held not later than sixty (60) days following the date of execution of this Agreement, the rights or interests described below:

(a) MBTA shall grant to CONRAIL an easement and right of first refusal to operate its service over the Dorchester Branch, MP 0.0 to 9.5, in the form substantially equivalent to EXHIBIT 7, attached hereto and incorporated by reference.

(b) CONRAIL shall grant to MBTA a one-track easement and right of first refusal to operate its service over the Grand Junction Secondary Track, MP 0.0 to 2.7, in the form substantially equivalent to EXHIBIT 8, attached hereto and incorporated by reference

(c) CONRAIL shall convey to MBTA such parcel or parcels of real property along the Boston and Providence Main (Shore) Line right-of-way in the town of Mansfield as may be necessary to permit MBTA to operate and maintain a passenger station in Mansfield, in a form substantially equivalent to EXHIBIT 9, attached hereto and incorporated by reference.

Section 10.03. Framingham Yard

The parties agree that not later than six (6) months following the date of execution of this Agreement,

CONRAIL shall lease to MBTA for nominal rent and for a term of one (1) year the certain two (2) parcels of real property in the Framingham Yard as indicated on the map attached hereto as EXHIBIT 10 and marked Parcel 1 and Parcel 2. Said lease shall include any buildings, structures or facilities which may be located thereon, including signals, steam and water lines, electric power vaults and lines, telephones and similar facilities. Said lease shall also include, but not be limited to, the following provisions:

(a) Grant MBTA an option to purchase the leased parcels during the term of the lease for a price to be negotiated in good faith by MBTA and CONRAIL, which price shall be the fair market value of such parcels. Notice of intent to exercise said option shall be given by MBTA not less than six (6) months prior to the expiration of said lease. It is understood that should the MBTA not purchase said properties, the existing lease will be allowed to expire and shall not be renewed by CONRAIL.

(b) MBTA will assume full responsibility for payment of all costs and expenses related to said leased parcels including, but not limited to real estate taxes and maintenance costs.

(c) MBTA, at its sole cost and expense, and in accordance with a plan for the construction of certain improvements by MBTA on the leased parcels, which plan will



be prepared by MBTA and agreed to in advance by CONRAIL and made a part of said lease, shall remove all rail, ties and other track material currently located on the leased parcels except those materials which are fit and which may be used in constructing new track, and shall place such surplus materials in an area in the Framingham Yard designated by CONRAIL and stacked in a condition reasonably acceptable to CONRAIL for pickup by CONRAIL. It is understood that such surplus material is the sole property of CONRAIL and will be disposed of at CONRAIL's discretion.

(d) MBTA, at its sole cost and expense, in accordance with the aforesaid plan shall provide all labor and materials other than those remaining on the leased parcels as provided above, which are necessary to effect a new track arrangement agreed to in said plan.

(e) MBTA, at its sole cost and expense, shall remove from the leased parcels, in a manner first approved by CONRAIL, any improvements made on said parcels, subsequent to the effective date of the Lease Agreement, and will restore the property to the condition existing prior to the effective date of the Lease in the event the sale referred to in Section 10.03 (a) is not closed.

(f) CONRAIL will grant to MBTA an easement over the east leg of the Wye leading from the Boston Line to Framingham North Yard for the purpose of loading and unloading passengers, which easement shall be included in said lease.

(g) All vertical and horizontal clearances on the leased parcels shall be approved by CONRAIL prior to construction of any improvements including, but not limited to, track relocations.

(h) It is further agreed that upon CONRAIL's determination to relocate its facilities and operations presently existing at the parcel of land described generally at Section 1.02(1) of this Agreement and identified as Parcel 3 or Exhibit 10, attached hereto and made part hereof, CONRAIL will forthwith notify MBTA of this determination, and MBTA shall have the option to purchase such parcel by providing written notice of same within sixty (60) days following receipt of notice of CONRAIL's determination. MBTA's option to purchase such parcel, if exercised hereunder, shall be at a price to be negotiated in good faith by the parties, which price shall be fair market value of such parcel.

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## ARTICLE 11

### AFFIRMATIVE DUTIES, REPRESENTATIONS AND WARRANTIES

#### Section 11.01. Operating Duties in Regard to Safety

User shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury, death or loss to: all employees and passengers of the Owner, Owner's operating contractors, all tracks, bridges and other equipment of the Owner and all adjoining utilities and other equipment in the Owner's rights-of-way. Unless otherwise provided by law, User will be solely responsible to give all notices and comply with all applicable laws, rules, regulations and lawful orders of any public agency or authority in connection with its operations under this Agreement bearing on the safety of persons or property or their protection from damage, injury, death or loss. Without limitation, this shall include observance of all safety rules and regulations administered by the Interstate Commerce Commission, Federal Railroad Administration or Massachusetts Department of Public Utilities including, for example, the FRA's regulations at 49 CFR Subtitle B, Chapter II; all applicable regulations regarding the transport of hazardous materials or wastes prescribed by the U. S. Department of Transportation including 49 CFR Parts 171 et seq, and prescribed by the U. S.

Environmental Protection Agency including 40 CFR Part 263; and all safety rules and other operating procedures of general applicability and future effect issued by Owner and forwarded in writing to User. At Owner's reasonable request, User shall promptly furnish Owner with evidence satisfactory to Owner demonstrating User's compliance with the above.

Section 11.02. Mutual Representations and Warranties

When this Agreement is executed by the parties, the parties shall have represented and warranted to each other that: (a) the parties have the corporate power and authority to enter into this Agreement and to carry out their respective obligations hereunder; (b) the parties have taken all legal action necessary to authorize them to enter into and perform their respective obligations hereunder; (c) entering into and performing this Agreement does not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body, or violate any agreement by which a party is bound; (d) there is no known litigation or proceeding pending or threatened against a party which could materially or adversely affect the performance of this Agreement; and (e) the parties have obtained all approvals as may be required to permit their respective performance of the obligations of this Agreement.

Section 11.03. Certain Duties and Representations

CONRAIL (1) warrants and represents that it has obtained, on or before the date of execution of this Agreement, sufficient right, title or interest in CONRAIL Rail Properties to insure that MBTA shall have and enjoy the access rights granted to it under this Agreement for the term hereof; and (2) shall do nothing to forfeit or otherwise to impair such rights as CONRAIL may have in its Rail Properties so as to interfere with MBTA's access rights hereunder during the term hereof.

\*\*\*\*\*

ARTICLE 12  
GENERAL PROVISIONS

Section 12.01. Labor Rights

(a) The User agrees that its entrance upon and use of the Owner's properties is for its corporate purpose of providing service pursuant to appropriate authority and that such use does not create or continue any rights on the part of the User's employees or its contractors with respect to any other current or future use of the Owner's properties, including without limitation, maintenance, operation, rehabilitation, and improvement thereof by the Owner or Owner's contractors. The User shall indemnify, defend, and hold harmless the Owner and the Owner's contractors against any liability arising from any claims or employment protection rights including without limitation rights or claims arising from the performance of any work for the User on the Owner's properties by the Owner or the Owner's contractors under this Agreement.

(b) Nothing contained in this Agreement shall require either party to perform any service or take any action which would violate any term or condition of any then current labor agreement between the respective parties and any organization representing any of their respective employees or applicable to the respective parties by reason of operation of law.

Section 12.02. Status As Independent Contractor

In connection with all maintenance or other work performed by MBTA on CONRAIL's account in furtherance of CONPAIL's freight operation on MBTA Rail Properties under Section 5.01 and any other work performed by MBTA on behalf of CONRAIL under this Agreement, the parties intend that the MBTA shall act as an independent contractor and not as the agent for CONRAIL.

Section 12.03. Clearing Wrecks -- MBTA Rail Properties

(a) (1) When, as a result of CONRAIL's sole use of MBTA Category B Rail Properties, rerailing, wrecking service or wrecking train service is required, CONPAIL shall perform or arrange to have performed such service at CONRAIL's sole cost and expense, including without limitation, removal of damaged equipment, repair and restoration of roadbed, track, signals, communication systems and all other right of way structures.

(2) In the event that MBTA's sole use of Category B Properties results in the need for wrecking services as described in this Section, the provisions of Section 12.04(a) shall apply.

(3) In the event that any joint use of Category B MBTA Rail Properties by CONRAIL and MBTA results in the need for wrecking services as described in this Section, the provisions of Section 12.04(b) shall apply.

(b) With respect to incidents on MBTA Category A Rail Properties the following provisions shall apply:

(1) When, as a result of CONRAIL's sole use of MBTA Category A Rail Properties, rerailing, wrecking service or wrecking train service is required, MBTA, with the cooperation, assistance, and advice of CONRAIL, shall have the option of requesting CONRAIL to perform such service or of performing such service by itself or by its contractor, all at CONRAIL's sole cost and expense, including without limitation, removal of damaged equipment, repair of damaged equipment, repair and restoration of roadbed, track, signals, communication systems and all other right of way structures.

(2) When, as a result of MBTA's sole use of MBTA Category A Rail Properties, rerailing, wrecking service or wrecking train service is required, MBTA, with the cooperation, assistance, and advice of CONRAIL, shall have the option of requesting CONRAIL to perform such service at MBTA's sole cost and expense or of performing such service by itself or by its contractor, including without limitation, removal of and restoration of roadbed, track, signals, communication systems, and all other right of way structures.

(3) When, as a result of joint use of MBTA Category A Rail Properties by MBTA and CONRAIL, rerailing, wrecking service or wrecking train service is required, the



provisions of Section 12.03(b)(1) will apply except that all costs, including without limitation liability costs, will be apportioned in accordance with the provisions of ARTICLE 7.

(c) Unless the parties otherwise agree in writing, all repairs and restorations performed pursuant to this Section shall be to the condition existing immediately preceding the wreck.

(d) All CONRAIL locomotives, cars, equipment, lading (including loss thereof) and salvage from any such wreck or derailment under the management or control of MBTA shall remain the property of CONRAIL. Any MBTA locomotives, cars, equipment, lading (including loss thereof) and salvage involved in such wreck or derailment shall remain the property of MBTA.

#### Section 12.04. Clearing Wrecks -- CONRAIL Properties

(a) When, as a result of MBTA's sole use of CONRAIL Rail Properties, rerailing, wrecking service, or wrecking train service is required, CONRAIL promptly shall perform or arrange to have performed such service at MBTA's sole cost and expense, including without limitation, removal of damaged equipment, repair and restoration of roadbed, track, signals, communication systems and all other right of way structures.

(b) When, as a result of MBTA's and CONRAIL's joint use of CONRAIL Rail Properties, rerailing, wrecking service, or wrecking train service is required, the provisions of the foregoing paragraph (Section 12.04(a)) will apply except that all costs, including without limitation liability costs will be determined in accordance with the provisions of ARTICLE 7.

(c) Unless the parties otherwise agree in writing, all repairs and restorations performed pursuant to this Section shall be to the condition existing immediately preceding the wreck.

(d) All MBTA locomotives, cars, equipment, lading (including loss thereof) and salvage from any such wreck or derailment under the management or control of CONRAIL shall remain the property of MBTA. Any CONRAIL locomotives, cars, equipment, lading (including loss thereof) and salvage involved in such wreck or derailment shall remain the property of CONRAIL.

#### Section 12.05. Force Majeure

(a) MBTA will be excused from any obligation under this Agreement where non-performance is occasioned by the occurrence of unusually severe weather not normally experienced in Massachusetts, explosion, fire, disaster, act of God, or any other event which is beyond its reasonable control including, without limitation, the

disapproval, in whole or in part, of the MBTA's budget for its operations or maintenance of, or other use of the MBTA Rail properties. Except as otherwise provided expressly in the Agreement, performance shall be excused only so long as and to the extent that any such event shall prevent performance.

(b) CONRAIL will be excused from any nonfinancial obligations under this Agreement where non-performance is occasioned by the occurrence of unusually severe weather not normally experienced in Massachusetts, explosion, fire, disaster, act of God, or any other event which is beyond its reasonable control. Performance shall be excused only so long as and to the extent that any such event shall prevent performance.

Section 12.06. Notices

(a) Any notices required in this Agreement shall be sent in writing to the parties at the addresses listed below, unless either party shall inform the other party in writing of any change in that address:

CONRAIL: Consolidated Rail Corporation  
Attn. : Senior Vice President, Operations  
1740 Six Penn Center Plaza  
Philadelphia, PA 19103-2959

**Copy:**       General Manager-Contracts  
              801 - 1528 Walnut Street  
              Philadelphia, PA 19102-3693

**Copy:**       General Manager,  
              Northeastern Region,  
              R.D. 2, Box 145  
              Selkirk, NY 12158-9618

**MBTA:**       Massachusetts Bay Transportation  
              Authority

**Attn.:**     General Manager  
              10 Park Plaza  
              Boston, MA 02116

**Copy:**       Director of Railroad Operations  
              10 Park Plaza  
              Boston, MA 02116

(b) All approvals and consents required under this Agreement shall be in writing and signed by an Officer identified in this section.

Section 12.07. No Third Party Rights

This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be construed or interpreted as creating or increasing any right in any third person to recover by way of damages or otherwise against either of the parties hereto.

Section 12.08. Headings

All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Section 12.09. Entire Agreement

This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto with respect to the matters described in this Agreement, and supersede any and all agreements or understandings whether oral or written, between the parties. However, nothing in this Agreement shall be deemed to extinguish CONRAIL's Transportation Easement retained under the provisions of the January 17, 1973 Deed from the Trustees of The Penn Central Transportation Company to MBTA as described in Section 1.02 of this Agreement.

Section 12.10. Amendments

No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

Section 12.11. Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of the respective successors and assigns of the parties, including, without limitation, the successors or assigns of a party's Rail Properties or any portion thereof. For this purpose, any party hereunder shall enter into an agreement with any such successor or assign obligating such successor or assign to all the terms and conditions of this Agreement.

Any party to this Agreement shall remain liable jointly and severally with any successor or assign for any event of default or other breach of this Agreement which occurred, and any charges or obligation which accrued, prior to the date of the assignment notwithstanding the assumption by the successor or assign of such liabilities, charges, or obligations.

Section 12.12. Regulatory Approval

Each party shall have the obligation to obtain all necessary regulatory and other approvals for it to enter

into this Agreement, any modification or amendment of this Agreement, or to comply with any of the provisions of this Agreement. The Owner shall be under no obligation to comply with any provision of this Agreement if it determines that such modification or amendment or proposed action under this Agreement requires the approval of any regulatory body unless and until the User provides to the Owner sufficient evidence that such approval has been obtained or is not required.

#### Section 12.13. Records

Both parties shall maintain appropriate operating and accounting records which record the locomotives and cars and the mileage of same moved by the User on Owner's tracks. Either party shall have the right, upon reasonable notice, to inspect, examine and audit all operating and accounting records and supporting documents of the other party, including, without limitation, dispatching records, and all other books and records that relate to the performance of this Agreement. Nothing in this Agreement shall be construed as obligating either party to retain books or records beyond the period specified in regulations of the Interstate Commerce Commission or of the Federal Railroad Administration.

Section 12.14. No Representation and Waivers

Except as expressly provided herein, the parties make no representations or warranties and waive no rights or remedies.

Section 12.15. Non-Discrimination

The parties shall comply with the terms and conditions contained in EXHIBIT 11.

Section 12.16. Past Claims

Each party hereby releases the other from any and all claims, disputes, or causes of action, known or unknown as of the Effective Date, except damages arising out of personal injury or death which are subject to Section 12.17, which arise out of or may be connected in any way with use by either party of any of the Rail Properties prior to the Effective Date including, without limitation, with respect to charges for use or maintenance of such Properties, or with respect to losses to property or damages with respect to use or maintenance of the Properties by either party; provided that claims, disputes or causes of action arising under separate, formal force account agreements executed by the parties before the Effective Date and after January 1, 1980, shall not be subject to this provision.



Section 12.17. Past Liabilities

All outstanding claims for liability to third parties, including passengers and employees of the parties, which are not barred by applicable statutes of limitation, shall be discharged or otherwise disposed of in accordance with ARTICLE 7 notwithstanding that the claims arose before the Effective Date of this Agreement.

Section 12.18. No Personal Liability

No recourse shall be had by either party for any claim against any officer, director, stockholder, employee or agent of the other party alleging personal liability on the part of such person, unless such claim is based upon the bad faith, fraud or deceit of such person.

Section 12.19. Effect of Invalidity


In the event that any provision of this Agreement is found to be invalid or unenforceable in any respect, the remaining provisions shall nevertheless be binding with the same effect as if the invalid or unenforceable provision was originally deleted.

Section 12.20. Massachusetts Law

This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 20th day of NOVEMBER, 1986.

ATTEST:

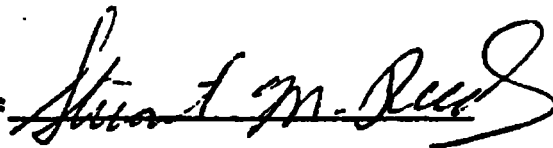
  
\_\_\_\_\_  
Notary Public

ATTEST:

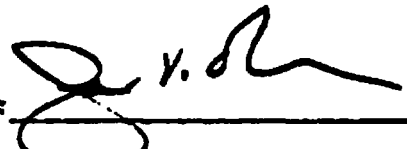
APPROVAL AS TO FORM:

///'  
\_\_\_\_\_  
General Counsel

CONSOLIDATED RAIL CORPORATION

BY:   
\_\_\_\_\_  
Stuart M. Reed

MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

BY:   
\_\_\_\_\_  
J. V. O'Connell

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

November 12, 1986

Then personally appeared the above named  
James F. O'Leary as aforesaid and acknowledged  
the foregoing instrument to be the free act and deed of the  
Massachusetts Bay Transportation Authority.

Virginia L. Brauer  
Notary Public

My Commission Expires:

3/26/93

COMMONWEALTH OF PENNSYLVANIA

Philadelphia, ss.

*NOV 18 1986*

Then personally appeared the above named  
*STEFAN M. SOCC* as aforesaid and acknowledged  
the foregoing instrument to be the free act and deed of the  
Consolidated Rail Corporation.

  
Notary Public

My Commission Expires:

*5-11-89*

CHARLES F. JONES  
Notary Public, Phila. Coun. Co.  
My Commission Expires 5-11-89

# ADDENDUM 1

## MAINTENANCE PROPERTIES

### Category A -- Jointly Used with CONRAIL

Facility <sup>1</sup>	Location	Mileage <sup>2</sup>	Maintenance <sup>2</sup>
<sup>5</sup> Boston Line (B&A M.L.)	0.45 - West End of Cove Interlocking	0.45 - 1.1	Class III <sup>3</sup>
Boston Line (B&A M.L.)	Riverside - Framingham	10.83 - 21.38	Class III <sup>3</sup>
Franklin Branch	Readville - Franklin, MA	0.0 - 18.2	Class III <sup>4</sup>
Stoughton Branch	Canton - Stoughton	0.0 - 4.7	Class II
East Junction Ind. Track	East Junction MA/RI State Line	0.0 - 0.6	Class II
Readville Yard	Sprague St. - Overhead Bridge	0.9 - 650' East	Class III
Dorchester Branch	Tower 1 to Readville	0.0 - 9.11	Class II
East Route Main Line	Reading Jct. to Revere Interlocking	1.36 - 2.75	Class II

<sup>1</sup> Line Segment, Yard, etc.

<sup>2</sup> FRA Class

<sup>3</sup> To be maintained so as to enable passenger train speeds of not less than 60 MPH

<sup>4</sup> To be maintained so as to enable train speeds of not less than 30 MPH

<sup>5</sup> This segment is owned by the Mass. Turnpike Authority (MTA), in accordance with deed between New York Central (NYC) (a predecessor of Conrail), dated December 27, 1962, which grants NYC (Conrail) a permanent operating easement.

# ADDENDUM 1

## MBTA RAIL PROPERTIES

### Category B -- Exclusively Used by CONRAIL

Facility <sup>1</sup>	Location	Milepost	Maintenance <sup>2</sup>
Millis Ind. Track (Formerly Clicquot Secondary)	Medfield - Clicquot	0.0 - 3.2	Class I
Dedham Running Track	Readville - Dedham	0.0 - 2.7	Class I
Middleboro Branch	Braintree - Campello	0.0 - 11.4	Class II
Neponset Running Track (Formerly Milton Secondary)	Milton-Switch Neponset	0.1 - 3.9	Class I
Plymouth Running Track	South Braintree/Plymouth	1.2 - 1.7	Class II
East Junction Ind. Track	East Junction MA/RI State Line	0.6 - 3.7	Class I
East Boston Branch	Revere Interlocking to East Boston	0.0 - 1.85	Class I

<sup>1</sup> Line Segment, Yard, etc.

<sup>2</sup> FRA Class

# ADDENDUM 2

## CONRAIL RAIL PROPERTIES

Facility <sup>1</sup>	Location	Milepost	Maintenance <sup>2</sup>
Boston Line (B&A M.L.)	Cove Control Point - Riverside, MA	1.1 - 10.83	Class III <sup>3</sup>
Boston Line (B&A M.L.)	Frammingham, MA	21.38 - 22.4	Class III
Beacon Park Yard	Track as designated by the Conrail employee in charge of Beacon Park Yard	3.1 - 4.8	Class II
Holliston Ind. Track	Holliston Wye-East & West Leg - Frammingham	21.2	Class I <sup>4</sup>
Frammingham Yard	1500' of track	Nevins Yard	Class I <sup>4</sup>
Grand Jct. Running Track	Allston - Somerville, MA	0.0 - 2.7	Class II <sup>5</sup>
Franklin Branch	Franklin, MA	18.2 - 18.8	Class I <sup>4</sup>

<sup>1</sup> Line Segment, Yard, etc.

<sup>2</sup> FRA Class

<sup>3</sup> To be maintained so as to enable passenger train speeds of not less than 60 MPH

<sup>4</sup> To be maintained so as to enable train speeds of not less than 15 MPH.

<sup>5</sup> To be maintained by CONRAIL to the standard indicated, provided that any additional cost for highway crossing protection circuits required to increase speed above 10 MPH and requested by MBTA will be assumed by MBTA.

<sup>6</sup> Sufficient headroom to allow MBTA equipment to access entry switch to Grand Jct. running track from the Boston Line.

DEED

CONSOLIDATED RAIL CORPORATION, a corporation of the Commonwealth of Pennsylvania, with an office at Six Penn Center Plaza, Philadelphia, Pennsylvania 19103-2959, ("CONRAIL"), in consideration of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) paid, releases to Massachusetts Bay Transportation Authority, a body politic and corporate created by and acting pursuant to St. 1964, c. 563, as amended, whose address is Ten Park Plaza, Boston, Massachusetts 02116, all its right, title and interest of in and to the following described premises:

BEING a part of the premises which the Trustees of the Property of the \_\_\_\_\_, Debtor, by Conveyance Document No. \_\_\_\_\_, dated March 30, 1976, and recorded in \_\_\_\_\_ in Book \_\_\_\_\_ at page \_\_\_\_\_, granted and conveyed unto CONRAIL.

SUBJECT, however, to (1) any easements or agreements of record or otherwise affecting the land hereby conveyed; (2) any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the herein conveyed premises, together with the right to maintain, repair, renew, replace, use and remove same; and (3) the state of facts disclosed by survey made by \_\_\_\_\_, dated \_\_\_\_\_.

CONRAIL/MBTA

Trackage Rights Agreement



EXHIBIT 1

(2 of 3)

IN WITNESS WHEREOF, the said CONRAIL has caused its corporate seal to be hereunto affixed and these presents to be executed in its name and on its behalf of John F. Jaeger, its Assistant Vice President-Real Estate, thereto duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 1986.

SIGNED, SEALED & DELIVERED  
in the presence of us:

CONSOLIDATED RAIL CORPORATION  
By:

\_\_\_\_\_  
John F. Jaeger, Assistant  
Vice President-Real Estate

Attest:

\_\_\_\_\_  
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF PHILADELPHIA        ):       ss Phila., PA \_\_\_\_\_, 1986  
  )

Then personally appeared the above-named John F. Jaeger  
and acknowledged the foregoing instrument to be the free  
act and deed of Consolidated Rail Corporation, before me.

---

Notary Public

RELEASE DEED

CONSOLIDATED RAIL CORPORATION, a corporation of the Commonwealth of Pennsylvania, with an office at Six Penn Center Plaza, Philadelphia, Pennsylvania 19103-2959, releases to Massachusetts Bay Transportation Authority, a body politic and corporate created by and acting pursuant to St. 1964, c. 563, as amended, whose address is Ten Park Plaza, Boston, Massachusetts 02116, ("MBTA"), in consideration of an Agreement entered into with the MBTA, dated \_\_\_\_\_, including the agreement by MBTA pursuant to Section 5.01(e) thereof to construct the South Station WYE connector), all its right, title, and interest in, and right to use and maintain, that certain real property located in the County of Suffolk within the South Station Terminal area and the approaches thereto between Mileposts 0.45 and 0.00 including, without limitation, any rights which CONRAIL may have under an easement granted by the Boston Redevelopment Authority to the Boston Terminal Corporation, dated July 1, 1965, whether by way of an assignment or by operation of the Regional Rail Reorganization Act of 1983, as amended, (45 USC Section 701 et seq). Such real property shall include all running, side, switching, yard, and interchange tracks and all signals, steam and water lines, electric power vaults and lines, telephones, and similar facilities. As part of this release of all interests in real property, CONRAIL hereby releases any and all rights it may have to the use of said premises or the operation of the facilities related thereto by virtue of any license or

CONRAIL/MBTA

Trackage Rights Agreement

EXHIBIT 2

(2 of 3)

~~contract with MBTA~~ or with any other present or previous owner or operator of said premises and related facilities.

The above release is not intended to include the release of any rights CONRAIL may have to the continued use of said premises under Section 3.01(d) of the Agreement between the Parties, dated \_\_\_\_\_, and referred to above.

IN WITNESS WHEREOF, CONRAIL has caused its corporate seal to be hereunto affixed and these presents to be executed in its name and on behalf by John F. Jaeger, its Assistant Vice President-Real Estate, thereto duly authorized this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 1986.

SIGNED, SEALED & DELIVERED  
in the presence of us:

CONSOLIDATED RAIL CORPORATION  
By:

\_\_\_\_\_  
John F. Jaeger, Assistant  
Vice President-Real Estate

Attest:

\_\_\_\_\_  
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF PHILADELPHIA

: ss Phila., PA \_\_\_\_\_, 1986

Then personally appeared the above-named John F. Jaeger  
and acknowledged the foregoing instrument to be the free  
act and deed of Consolidated Rail Corporation, before me.

---

Notary Public

CE-3 R2 1-85  
Printed in USA MU

# RENTAL SCHEDULE FOR UTILITY OCCUPATIONS OF CONSOLIDATED RAIL CORPORATION PROPERTY

(IN EFFECT JANUARY 1, 1985)

## SCOPE

1. The following are charges for wires, cables, poles and electrical conduits and for pipe crossings, including longitudinal occupation, on, over, across or under the Railroad Company's right of way and property and for attachments to or occupation of railroad facilities.
2. A proportionate additional rental calculated to the nearest dollar shall be made for any crossing in excess of 200 feet in length.
3. All annual licenses shall have a clause included providing for an automatic yearly increase or decrease based on the Consumer Price Index outlined in the Agreement.
4. The total annual rental for any one Agreement shall not be less than \$100.00.
5. Note of exception: The charges herein are not intended to extend to operating agreements covering use of joint facilities.

## I

The Railroad Company will be reimbursed for:

1. All labor and material furnished by it in connection with the construction, reconstruction, repair, relocation or removal, etc. of any overhead or undergrade crossing, or any occupation of its property.
2. The services of such watchmen, flagmen, inspectors or any other employees as may, in the opinion of the Railroad Company, be necessary to safeguard its interests or to maintain traffic.
3. The cost of all drawings and engineering furnished.
4. The cost of all insurance which may be deemed necessary by the Railroad Company. (See Page 2)

NOTE: The above costs shall include the current percentages for overhead and fringe benefits.

## II

## PREPARATION FEES

The following charges are intended to cover the cost of processing of papers and other incidental expenses incurred by the Railroad Company, and are in addition to the rentals shown hereafter in this schedule.

**PUBLIC HIGHWAYS** — No charge will be made for the processing of agreements for any overhead or undergrade crossing of the right of way of the Railroad Company within the limits of any public highway to those holding franchise rights. (See Item I as to incidental charges).

**RAILROAD RIGHT OF WAY:** Charges will be made as follows:

1. Wire and Cable Crossings and Longitudinal Occupations over or under Railroad Company right of way and property:
  - (a) Not exceeding 300 volts to one individual service ..... \$50.00
  - (b) All other transverse crossings ..... 200.00
  - (c) All longitudinal occupations, and any agreement regardless of voltage NOT prepared on a standard printed form, not less than ..... 350.00
2. Pipe and Sewer Crossings and Longitudinal Occupations over or under Railroad Company right of way and property:
  - (a) Pipe not exceeding 3" inside diameter to one individual service ..... \$50.00
  - (b) All other transverse crossings ..... 200.00
  - (c) All longitudinal occupations, and any agreement regardless of size of pipe NOT prepared on a standard printed form, not less than ..... 350.00

NOTE: Crossing of right of way by pipe type cable consisting of one or more high voltage cables encased in a steel pipe under inert oil pressure, and/or further encased in a larger steel pipe and the space between the pipes filled with compacted sand should be subject to special consideration and each case handled individually.

- (e) Spare or unoccupied ducts or pipes, each (When the duct shall be occupied in the future by a cable, the annual rental charge shall govern and the \$5.00 charge cease) ..... \$5.00
- (f) Ducts or pipes carrying conductors ..... NO CHARGE
- (g) Manholes, each ..... 25.00

NOTE: (1) Attachments of wires, cables, etc. to bridges, buildings, poles or structures of Railroad Company subject to special consideration in each case.

- (2) A proportionate additional rental calculated to the nearest dollar shall be made for any crossing in excess of 200 feet.

### **SECTION C — POLES, TOWERS, GUYS AND ANCHORS**

- 1. Single wooden pole (per pole) ..... \$20.00
- 2. All other supporting structures other than the auxiliary facilities and appurtenances listed in Items 3, 4, 5 and 6 below ..... 25.00 ea.
- 3. Each brace, stub pole or anchor ..... 20.00 ea.
- 4. Each guy anchored on or crossing railroad property ..... 5.00
- 5. Each span guy wire crossing ..... 30.00
- 6. Guys, stubs, anchors and push or pull braces not definitely required by specification for the support of a crossing pole, placed on Railroad right of way at the request of the Railroad Company, shall be considered as a part of the crossing pole and no charges made therefor.

NOTE: The above charges are in addition to the wire or cable occupation charges provided for in Sections "A" and "B".

### **SECTION D — PIPES AND SEWERS**

- 1. **PUBLIC HIGHWAYS** — Crossings wholly within the limits of a public highway and not supported by or attached to structures of the Railroad Company for those holding proper franchise rights. NO RENTAL.
- 2. **RAILROAD RIGHT OF WAY AND PROPERTY** — Crossings not exceeding 200 feet in length. Annual rental will be as follows:
  - (a) **Circular Lines Carrying No Pressure:**  
 \$1.00 per inch of inside nominal diameter per pipe  
 Minimum charge for any one crossing ..... \$100.00
  - (b) **Circular Lines Under Pressure and Carrying Non-Flammable, Non-Explosive or Non-Combustible Supporting Materials, except Coal and Water Slurry:**  
 \$1.50 per inch of inside nominal diameter per pipe  
 Minimum charge for any one crossing ..... 100.00
  - (c) **Circular Lines Under Pressure and Carrying Flammable, Explosive or Combustible Supporting Materials, except Coal and Water Slurry:**  
 Pipe not exceeding 3" inside nominal diameter  
 Minimum charge for any one crossing ..... 100.00  
 Pipe over 3" inside nominal diameter and not exceeding 12" inside diameter  
 Minimum charge for any one crossing ..... 125.00  
 Pipe over 12" inside diameter and not exceeding 24" inside diameter  
 Minimum charge for any one crossing ..... 175.00  
 Pipe exceeding 24" in diameter — \$8.00 per inch  
 Minimum charge for any one crossing ..... 300.00
  - (d) Rental for non-circular pipes shall be determined by the diameter of a circular pipe having an equivalent cross-sectional area.
  - (e) Rental for pipe tunnels or other special underground construction shall be subject to special consideration.
  - (f) Pipe lines carried over Railroad Company's property on bridges or other supports subject to special consideration in each case if permitted by Consolidated Rail Corporation's current specifications.

- (f) Spare or unoccupied ducts or pipes, each per mile ..... 125.00
- (g) Manholes, splicing chambers or pull boxes, each ..... 25.00
- (h) An additional charge shall be made for use of Railroad duct lines based on the value of the facility.

NOTE: Charges shown under (f), (g) and (h) are in addition to the charges shown under (a) to (e) inclusive.

NOTE: For occupations less than one mile in length, the rental shall be a proportionate amount of the above rates calculated to the nearest dollar but no rental for any wire, cable, duct or pipe occupation shall be less than the charge for one-quarter mile of such occupation.

## **SECTION B — ATTACHMENTS**

Annual rentals will be charged as follows when higher rates are not fixed:

1. Attachments of aerial wires and cables to poles or other structures of the Railroad Company used in wire line construction.
  - (a) Up to but not including 33,000 volts for each wire attached to Railroad Company's cross-arm or bracket ..... \$2.00
  - (b) Up to but not including 33,000 volts for each wire attached to Licensee's cross-arm or bracket ..... 1.00
  - (c) For each cross-arm or bracket attached to Railroad Company's poles ..... 1.00
  - (d) Wires of 33,000 volts and over attached to the Railroad Company's cross-arms or brackets ..... 2.00
  - (e) Wires of 33,000 volts and over attached to Licensee's cross-arms or brackets ..... 1.50
2. Attachments of aerial wires and cables to buildings or other structures.
  - (a) Each wire or cable attached to Railroad Company's building or structure, including Railroad or highway bridges, per attachment ..... 3.00
3. Attachments of cable terminals to poles, buildings, or structures including highway bridges, railroad bridges over highways or other bridges of the Railroad Company.
  - (a) Each cable terminal, loading coil, transformer or like device subject to special consideration in each case, but not less than ..... 25.00

NOTE: The above charges are to be made in addition to those under Section "A".

## **SECTION C — GUY WIRE CROSSINGS AND OVERHANGING CROSSARMS AND POWER WIRES AND CABLES OF POLE LINES OUTSIDE OF RAILROAD RIGHT OF WAY**

1. Each guy wire crossing railroad property but not anchored thereon ..... \$3.00
2. Cross-arms overhanging railroad property from poles located outside thereof, one or more cross-arms on any pole .. 2.00
3. Power wires and cables overhanging Railroad property from poles located outside thereof shall be calculated at the rates specified in Section "A", Paragraphs 1 and 2, and on a prorated basis, depending upon the number of overhanging wires, excluding the neutral; ground, static or lightning wires, but in no case less than ..... 165.00 per mile

## **SECTION D — PIPES AND SEWERS**

Annual rentals will be charged as follows:

1. Circular Lines Carrying No Pressure;
  - \$1.50 minimum charge per inch of inside nominal diameter or fraction thereof per 100 feet of occupation or fraction thereof. (See Item 10 below)
2. Circular lines under Pressure and Carrying Non-Flammable, Non-Explosive and Non-Combustible Supporting Materials, except Coal and Water Slurry;
  - \$2.00 minimum charge per inch of inside nominal diameter per 100 feet of occupation or fraction thereof. (See Item 10 below)
3. Circular Lines under Pressure and Carrying Flammable, Explosive and Combustible Supporting Materials, and Coal and Water Slurry;
  - \$3.00 minimum charge per inch of inside nominal diameter per 100 feet of occupation or fraction thereof, plus a negotiated figure based on volume of product transported. (See Item 10 below)



## FORMULA 1

For Rental Where Line(s) Is On Utility Structures.

Annual Right of Way Rental Per Mile =  $(N \times V \times R \times U) \div (P \text{ at } S \text{ rates})$

Where N = Number of acres subtended by power circuit

$$\text{Per Mile} = \frac{5280 (A + 2C)}{43560}$$

A = Distance between outside conductors in feet.

C = NESC (Current Edition) building clearance in feet (overhead occupations only).

(Where there are two or more circuits of different or same voltages on the same structures, use A and C for circuit requiring greatest width).

V = Value of right of way land in dollars per acre based upon value of land adjacent to right of way inflated for increased value of cleared right of way.

R = Rental rate of 10 percent in States with no land taxes and 10 percent in States with land taxes.

U = Utility percent usage of right of way.

(For one circuit per structure = 50% (0.5), two circuits = 66 2/3% (0.67), three circuits = 75% (0.75), etc.

S = Scheduled power rate per mile of circuit.

First 50 kw = \$2.00 per kw.

Next 250 kw = \$0.20 per kw.

Next 9700 kw = \$0.02 per kw.

Balance = \$0.002 to \$0.01 per kw.

P = Power capacity of line in kilowatts, (not applicable to communication lines). For single phase =  $0.48 \times \text{kilovolts} \times \text{current}$  (ampere capacity per conductor),  $(0.48 = 0.8 \text{ (power factor)} \times 0.6 \text{ (utilization or load factor)})$ . For three phase =  $0.83 \times \text{kilovolts} \times \text{current}$  (ampere capacity per conductor)  $(0.83 = 1.73 \times 0.8 \times 0.6)$ .

## FORMULA 2

For Rental Where Line(s) Is On Railroad Structures.

The annual rental shall be the rental as determined by Formula 1 for use of right of way plus rental as determined below for use of structures.

The first part of rental should be figured as above except U would equal P/E where P = number of utility circuits on structures involved and E = number of railroad high voltage circuits plus number of utility circuits (P) plus, in electrified area, the catenary system counted as one, or in non-electrified territory the tracks or land counted as one.

Annual Structure Rental Per Mile =  $F \times B \times D \times G$

Where F = fixed charges = 25 percent:

B = Present day replacement value of structures per mile =  $L \times M \times T$ .

Where L = Original installed ledger value per mile.

M = ICC multiplier (latest ICC index for 31 Account less ICC index on date of installation).

T = Multiplier to increase  $(L \times M)$  figure to calculated present day replacement value.

D = Depreciated value of structure based on 100-year life in percent. (If 32 years old D = 0.88).

G = Percent of entire structure used by utility based upon moments. (Sum of moments of utility wires divided by sum of moments of all wires on structure).

SPECIFICATIONS FOR CERTAIN IMPROVEMENTS  
BY CONRAIL ON BOSTON LINE

(A) CONRAIL will install Continuous Welded Rail (CWR) on both main line tracks or single main line track where CWR not presently existing, between milepost 21.38 Framingham and the beginning of MBTA installed CWR at Back Bay, Boston, in accordance with the following:

(1) Rail will be 119# or heavier section, new or "fit" meeting AREA Class I "Recommended Rail Grading Classification" specifications.

(2) Rail strings will be joined by field welding or epoxy glued insulated joints.

(3) Tie plates will be canted and at least 7-1/2" x 13".

(4) Turnouts will be replaced when necessary by physical condition, and then by a minimum of 127#, wherever the rail is replaced with CWR. Turnouts will be of equal or heavier rail section than the adjoining CWR and stockrails will be joined to CWR with field welds. Switch points will be the "Sampson" type on the "through side" of the wayside turnouts and both sides of crossovers.

CONRAIL/MBTA

Trackage Rights Agreement, Effective July 1, 1985.

EXHIBIT 4

(2 of 2)

(5) In addition to the above, CONRAIL will make such improvements in accordance with the "Manual for Construction and Maintenance of Track", CONRAIL publication MW-4, dated March 1, 1977.

(B) CONRAIL will install Traffic Control System (TCS) on both main line tracks or single main line track, where not presently existing, between milepost 21.38 Framingham and milepost 0.45 Boston.

(1) TCS new installations will be controlled from same dispatcher location as existing, unless Division headquarters is changed and then the location would be that of new Division headquarters.

(2) Signal aspects will be the same and signal equipment will be similar and compatible with the Commonwealth of Massachusetts funded TCS installed on track 2 in 1981.

SPECIFICATIONS FOR IMPROVEMENTS PERMITTING CERTAIN  
OPERATING SPEEDS ALONG BOSTON LINE

(A) Except as provided in Paragraph B, below, CONRAIL will make improvements between Milepost 4.5 in Allston and 21.38 in Framingham such that curves will be elevated for not less than 60 MPH operation, in accordance with the following:

(1) Design underbalance shall not exceed  $1-1/2^{\circ}$  Eu. without MBTA approval. Such approval will not be unreasonable withheld.

(2) Spiral lengths and runoffs will be in accordance with AREA Standard Practice recommendations or approved by the MBTA. Such approval will not be unreasonably withheld.

(B) The  $2^{\circ}59'$  curve between Milepost 10 and 11 will be elevated for 55 MPH operation at  $1-1/2^{\circ}$  Eu.

(C) Between Milepost 4.0 in Allston and Back Bay Station, CONRAIL will improve and maintain as necessary so that operating speeds will be not less than those in effect per the CONRAIL Employee Timetable, effective December 1, 1984.

CONRAIL/MBTA

Trackage Rights Agreement, Effective July 1, 1985.

SPECIFICATIONS FOR PEDESTRIAN BRIDGES AT CERTAIN  
LOCATIONS ON BOSTON LINE

Pedestrian Bridges will be installed at Wellesley Farms, Wellesley Hills and West Natick, in accordance with the following:

- (1) Bridges furnished by Conrail will be used, but will be suitable for Pedestrian use.
- (2) Will be installed in conformance with applicable laws provided that MBTA shall indemnify and hold harmless Conrail for any liability, claims, expense or cost arising out of the failure of such bridge as installed to meet the requirements of law with respect to access by handicapped persons.
- (3) Pedestrian bridges, when installed, will be considered property of MBTA for purposes of maintenance and liability.
- (4) Conrail will furnish and install Pedestrian Bridges complete at Wellesley Hills and Wellesley Farms Stations at their sole cost and expense, and will notify MBTA in writing immediately upon completion of such installation.

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Trackage Rights Agreement

EXHIBIT 6

(2 of 2)

- (5) MBTA will furnish the Pedestrian Bridge at West Natick Station, complete, at its sole cost and expense. Conrail will furnish foundations and piers and install the West Natick Pedestrian Bridge at its sole cost and expense.

EASEMENT AND RIGHT OF FIRST REFUSAL

DORCHESTER BRANCH

Massachusetts Bay Transportation Authority, a body politic and corporate created by, and acting pursuant to, St. 1964, c. 563, as amended ("MBTA"), grants to Consolidated Rail Corporation, a corporation of the Commonwealth of Pennsylvania, established pursuant to Title III of the Regional Rail Reorganization Act of 1973, as amended ("CONRAIL"), in consideration of the exchange of an easement and right of first refusal from CONRAIL to MBTA in and to the land commonly known as the Grand Junction Secondary line located in the Counties of Suffolk and Middlesex, the perpetual, non-exclusive easement to use for freight rail service purposes (including maintenance and construction as well as operations) the following described premises.

The land of the line of railroad known as the Dorchester Branch located in Boston, County of Suffolk and in Dedham, County of Norfolk, between Mileposts 0.0 and 9.5 as shown on the Valuation Map recorded in Suffolk Registry of Deeds, Book \_\_\_\_, Page \_\_\_\_, together with all running, interchange, switching, and side tracks (except privately owned industrial side tracks), and all signals, utility lines, drains, and other facilities used in connection with

CONRAIL/MBTA

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the operation, maintenance and construction of the  
Dorchester Branch (hereafter called "the tracks and related  
facilities"), being the same premises described in . . .

MBTA expressly reserves its rights as Owner of the  
premises, including, without limitation, the right to use  
the premises (including for purposes of maintenance and  
construction as well as operations) (i) in common with  
CONRAIL's freight rail easement hereunder for railroad  
purposes and (ii) exclusively for other transportation or  
communications purposes.

Except as may otherwise be agreed by the parties in  
writing, in which case said Agreement, if recorded, shall  
govern during the term thereof to the extent inconsistent  
with this easement, the following provisions shall govern  
the exercise of the parties' rights and obligations hereun-  
der:

(1) MBTA shall have the right to perform any or all of  
the following activities with respect to the use of the  
premises for rail purposes: (a) dispatching of trains and  
clearing of wrecks; and (b) maintenance, repair, reconstruc-  
tion, alteration, and improvement of any kind to the premis-  
es necessary for rail operations; provided, that should it  
fail to do so, CONRAIL may, in accordance with such plans  
as may be approved in advance by MBTA, which approval shall  
not be unreasonably withheld, perform such activities.

(2) The scheduling and movement of passenger trains  
shall take precedence over all other train scheduling and  
movement.



(3) MBTA agrees not to convey the fee interest or a leasehold interest recordable under Massachusetts law or any interest substantially equivalent to same, in the premises or any portion thereof, to anyone other than CONRAIL without first offering in writing to convey the same to CONRAIL and any such conveyance in contravention of this provision shall be void. Such offer to CONRAIL shall be for terms and conditions which are not less favorable than those proposed by MBTA for conveyance to a party other than CONRAIL. The terms of such offer to CONRAIL shall provide that a closing shall take place one hundred twenty (120) days from the date of the offer with the place of closing at the Suffolk Registry of Deeds. Conveyance shall be effectuated by a good and sufficient quitclaim deed or other legally sufficient instrument as appropriate. CONRAIL shall have up to the time of closing as set forth in the offer to accept or reject the offer made by MBTA. If the terms of any offer made to anyone other than CONRAIL materially change, CONRAIL shall be given a reasonable opportunity after notice in writing of such change to accept or reject the changed offer. If CONRAIL accepts the changed offer, the original offer to CONRAIL shall be amended to reflect the terms of the changed offer, and the closing time shall be extended a reasonable period by notice in writing sent by MBTA to CONRAIL.

(4) All uses of the premises reserved to MBTA hereunder shall be performed in a manner which does not interfere unreasonably with the easement granted to CONRAIL; and similarly all uses of the premises by CONRAIL under this easement shall be performed in a manner which does not interfere unreasonably with the rights reserved to MBTA hereunder.

Without limitation of MBTA's rights as owners of the premises, nothing in this easement shall be construed to grant to CONRAIL a right to approve actions by MBTA affecting the premises, including, without limitation, alterations and improvements thereto, relocations of tracks or other facilities, installation of privately owned industrial sidetracks, use of air or subsurface rights for development or other purposes, and granting of easements for utilities and crossings, provided that MBTA shall keep CONRAIL reasonably informed of those actions affecting CONRAIL's use contemplated hereunder and that such actions shall not unreasonably interfere with the easement granted to CONRAIL.

Notwithstanding the termination of commuter rail service by MBTA on the premises, it is hereby confirmed that this easement shall continue for rail freight service and any sale or other transfer of the premises by MBTA shall be made subject to such easement except as provided below.

CONRAIL may surrender the easement as to any portion or all of the premises at any time by delivering to MBTA a release in recordable form describing the premises or portion thereof being surrendered.

In the event CONRAIL ceases to use the premises or obtains a certificate of abandonment for all rail freight service on the premises from the Interstate Commerce Commission, this easement, and right of first refusal, including all rights by CONRAIL to use the premises, shall terminate. In such event, CONRAIL shall at the written request of MBTA deliver a release in recordable form evidencing the termination of this easement. Failure by

CONRAIL to provide such a release shall not in any way affect the termination of the easement as provided above. It is understood that for purposes of this paragraph, cessation of use shall not be deemed to include a short-term interruption in usage occasioned by the occurrence of unusually severe weather not normally experienced in Massachusetts, explosion, fire, disaster, act of God, or other event which is beyond CONRAIL's reasonable control.

The easement is granted subject to, and with benefit of, existing easements and restrictions of record. Any interest in tracks, signals, utility lines, drains, and other facilities as referred to above is granted "as is", and MBTA makes no warranty, express or implied, with respect thereto, as to merchantability, fitness or otherwise.

All of the terms of this grant of easement shall bind and inure to the benefit of MBTA and CONRAIL and their respective legal representatives, successors, and assigns forever.

EXHIBIT 7

(6 of 7)

Executed as a sealed instrument this \_\_\_\_ day of  
\_\_\_\_\_, 198\_.

MASSACHUSETTS BAY TRANSPORTATION  
AUTHORITY

By: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. \_\_\_\_\_, 198\_

Then personally appeared the above named \_\_\_\_\_,  
\_\_\_\_\_ as aforesaid, and acknowledged the foregoing  
to be the free act and deed of the Massachusetts Bay Trans-  
portation Authority.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

EASEMENT AND RIGHT OF FIRST REFUSAL  
GRAND JUNCTION SECONDARY TRACK

Consolidated Rail Corporation, a corporation of the Commonwealth of Pennsylvania, established pursuant to Title III of the Regional Rail Reorganization Act of 1973, as amended ("CONRAIL"), grants to Massachusetts Bay Transportation Authority, a body politic and corporate created by, and acting pursuant to, St. 1964, c. 563, as amended ("MBTA"), in consideration of the exchange of an easement and right of first refusal, from MBTA to CONRAIL in and to the land commonly known as the Dorchester Branch line located in the Counties of Suffolk and Norfolk, the perpetual, non-exclusive easement to use for passenger rail service purposes (including maintenance and construction as well as operations) the following described premises.

The land of the line of railroad known as the Grand Junction Secondary located in Boston, County of Suffolk and in Cambridge and Somerville, both within County of Middlesex, between Mileposts 0.0 and 2.7 as shown on the Valuation Map recorded in Suffolk Registry of Deeds, Book \_\_\_\_\_, Page \_\_\_\_\_, together with all running, interchange, switching, and side tracks (except privately owned industrial side tracks), and all signals, utility lines, drains, and other facilities used in connection with the operation, maintenance and construction of the Grand Junction Secondary (hereafter called "the tracks and related facilities"), being the same premises described in . . .

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Trackage Rights Agreement

CONRAIL expressly reserves its rights as Owner of the premises, including, without limitation, the right to use the premises (including for purposes of maintenance and construction as well as operations) (i) in common with MBTA's passenger rail easement hereunder for railroad purposes and (ii) exclusively for other transportation and communication purposes.

Except as may otherwise be agreed by the parties in writing, in which case said agreement, if recorded, shall govern during the term thereof to the extent inconsistent with this easement, the following provisions shall govern the exercise of the parties' rights and obligations hereunder:

(1) CONRAIL shall have the right to perform any or all of the following activities with respect to the use of the premises for rail purposes: (a) dispatching of trains and clearing of wrecks; and (b) maintenance, repair, reconstruction, alteration, and improvement of any kind to the premises necessary for rail operations; provided, that should it fail to do so, MBTA may, in accordance with such plans as may be approved in advance by CONRAIL, which approval shall not be unreasonably withheld, perform such activities.

(2) The scheduling and movement of passenger trains shall take precedence over all other train scheduling and movements.

(3) CONRAIL agrees not to convey the fee interest or a leasehold interest recordable under Massachusetts law, or any interest substantially equivalent to same, in the premises or any portion thereof, to anyone other than MBTA

without first offering in writing to convey the same to MBTA and any such conveyance in contravention of this provision shall be void. Such offer to MBTA shall be for terms and conditions which are not less favorable than those proposed by CONRAIL for conveyance to a party other than MBTA. The terms of such offer to MBTA shall provide that a closing shall take place one hundred twenty (120) days from the date of the offer with the place of closing at the Suffolk Registry of Deeds. Conveyance shall be effectuated by a good and sufficient quitclaim deed or other legally sufficient instrument as appropriate. MBTA shall have up to the time of closing as set forth in the offer to accept or reject the offer made by CONRAIL. If the terms of any offer made to anyone other than MBTA materially change, MBTA shall be given a reasonable opportunity after notice in writing of such change to accept or reject the changed offer. If MBTA accepts the changed offer, the original offer to MBTA shall be amended to reflect the terms of the changed offer, and the closing time shall be extended a reasonable period by notice in writing sent by CONRAIL to MBTA.

(4) All uses of the premises reserved to CONRAIL hereunder shall be performed in a manner which do not interfere unreasonably with the easement granted to MBTA; and similarly all uses of the premises by MBTA under this easement shall be performed in a manner which do not interfere unreasonably with the rights reserved to CONRAIL hereunder.

Without limitation of CONRAIL's rights as owners of the premises, nothing in this easement shall be construed to grant to MBTA a right to approve actions by CONRAIL affecting the premises, including, without limitation, altera-



tions and improvements thereto, relocations of track or other facilities, installation of privately owned industrial sidetracks, use of air or subsurface rights for development or other purposes, and granting of easements for utilities and crossings, provided that CONRAIL shall keep MBTA reasonably informed of those actions affecting MBTA's use contemplated hereunder and that such actions shall not unreasonably interfere with the easement granted to MBTA.

Notwithstanding the termination of freight rail service by CONRAIL on the premises, it is hereby confirmed that this easement shall continue for passenger rail service and any sale or other transfer of the premises by CONRAIL shall be made subject to such easement except as provided below.

MBTA may surrender the easement as to any portion or all of the premises at any time by delivering to CONRAIL a release in recordable form describing the premises or portion thereof being surrendered.

In the event MBTA ceases to use the premises, this easement and right of first refusal, including all rights by MBTA to use the premises, shall terminate. In such event, MBTA shall at the written request of CONRAIL deliver a release in recordable form evidencing the termination of this easement. Failure by MBTA to provide such a release shall not in any way affect the termination of the easement as provided above. It is understood that for purposes of this paragraph, cessation of use shall not be deemed to include short-term interruption of usage occasioned by the occurrence of unusually severe weather not normally experienced in Massachusetts, explosion, fire, disaster,

act of God, or other event which is beyond the MBTA's reasonable control.

The easement is granted subject to, and with benefit of, existing easements and restrictions of record. Any interest in tracks, yards, signals, utility lines, drains, and other facilities as referred to above is granted "as is", and CONRAIL makes no warranty, express or implied, with respect thereto, as to merchantability, fitness or otherwise.

All of the terms of this grant of easement shall bind and inure to the benefit of MBTA and CONRAIL and their respective legal representative, successors, and assigns forever.

EXHIBIT 8

(6 of 7)

Executed as a sealed instrument this \_\_\_\_ day of  
\_\_\_\_\_, 198\_.

CONSOLIDATED RAIL CORPORATION

By: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

\_\_\_\_\_, 198\_

Then personally appeared the above named \_\_\_\_\_,  
\_\_\_\_\_ as aforesaid, and acknowledged the foregoing to  
be the free act and deed of the Consolidated Rail Corpora-  
tion.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

DEED

CONSOLIDATED RAIL CORPORATION, a corporation of the Commonwealth of Pennsylvania, with an office at Six Penn Center Plaza, Philadelphia, Pennsylvania 19103-2959 ("CONRAIL"), releases to Massachusetts Bay Transportation Authority, a body politic and corporate created by and acting pursuant to St. 1964, c. 563, whose address is Ten Park Plaza, Boston, Massachusetts 02116 ("MBTA"), in consideration of an Agreement entered into with the MBTA, dated \_\_\_\_\_, all its right, title, and interest in, and right to use and maintain, that certain real property located in the County of Bristol, and being described as follows:

BEING a part of the premises which \_\_\_\_\_, by Conveyance, dated \_\_\_\_\_, and recorded in \_\_\_\_\_, in Book \_\_\_\_\_ at Page \_\_\_\_\_, granted and conveyed unto CONRAIL.

Such real property shall include all running, side, switching, yard, and interchange tracks and all signals, steam and water lines, electric power vaults and lines, telephones, and similar facilities necessary to the operation of the Mansfield passenger station, including, without limitation, the platform and parking lot.

IN WITNESS WHEREOF, CONRAIL has caused its corporate seal to be hereunto affixed and these presents to be

CONRAIL/MBTA

EXHIBIT 9

(2 of 2)

executed in its name and on its behalf by John F. Jaeger,  
its Assistant Vice President-Real Estate, thereto duly  
authorized this day of A.D. 1986.

SIGNED, SEALED & DELIVERED  
in the presence of us:

CONSOLIDATED RAIL CORPORATION  
By:

---

John F. Jaeger, Assistant  
Vice President-Real Estate

Attest:

---

Assistant Secretary



**NONDISCRIMINATION AND AFFIRMATIVE ACTION**

The parties, for themselves, their agents, contractors, successors or assigns, do hereby agree, as a part of the consideration of this Agreement, as follows:

(1) The Use shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, physical handicap or national origin, and shall take affirmative action to insure the applicants are employed and employees are treated during their employment without regard to the factors described above. Such action shall include, without limitation, employment upgrading, demotion or transfer; recruitment, or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) In the event that facilities are constructed, maintained or otherwise operated, whether by User or Owner, on Rail Properties under this Agreement, for a purpose for which a United States Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the parties shall construct, maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title VI of the Civil Rights Act of 1964, Title

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49, Code of Federal Regulations, Part 21 (Nondiscrimination in federally-assisted DOT programs), as such Act or regulations may be amended from time to time.

(3) The parties shall comply with any and all laws, rules or regulations which may be applicable thereto in connection with nondiscrimination and affirmative action.

**CONRAIL** 

**E.A.-1**

**SCHEDULE OF RATES AND SURCHARGES  
COVERING BILLING RAILROADS FOR  
USE OF FACILITIES, SERVICES AND  
EQUIPMENT**

**EFFECTIVE JULY 1, 1986**

**OFFICE OF ASSISTANT CONTROLLER  
EXPENDITURE ACCOUNTING  
PHILADELPHIA, PA**

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## SECTION - I

### LABOR SURCHARGES

- A. To all items of labor, except those chargeable to "Administration Functions," add the following percentages for supervision, administration (includes accounting, legal, management information, personnel, etc.) and use of tools, to amounts properly chargeable under Interstate Commerce Commission Classification.
1. To "Maintenance of Way & Structures" accounts.....31.28%
  2. To "Maintenance of Equipment" accounts (see Section IV, where applicable).....37.67%
  3. To "Transportation Rail-Line" accounts.....18.82%
  4. To "Non-Contract Labor".....3.64%
- B. When necessary to sub-divide the surcharges in Paragraph A among the labor surcharges, the following should govern:

	<u>Supervision</u>	<u>Administration</u>	<u>Use of Tools</u>
1. M. W. & S.	24.03%	3.64%	3.61%
2. M. of E.	30.42%	3.64%	3.61%
3. Transp. Rail Line	15.18%	3.64%	-
4. Non-Contract Labor	-	3.64%	-

#### Non-Contract Labor Charges:

##### a. Maintenance of Way and Structures

Charges will be made for salary costs plus the administrative additive for services of Engineering Department employees such as Design Engineers, Draftsmen, and survey parties or any other officers performing service in the office or field, solely in connection with a particular project or facility.

##### b. Maintenance of Equipment

Charges will be made for salary costs plus the administrative additive for services of Maintenance of Equipment employees such as Mechanical Superintendents, Shop Managers, General Foremen, and Foremen and/or similar officers or supervisors performing service solely in connection with a particular project or facility.

**c. Transportation**

Charges will be made for salary costs plus the administrative additive for services of Transportation Department employees such as Managers, Assistant Managers, Superintendents, Assistant Superintendents, Trainmasters, Assistant Trainmasters, Road Foremen of Engines, Assistant Road Foremen of Engines and/or similar officers and supervisors performing service solely in connection with a particular project or facility.

- C.** A charge of \$10.00 per month, without surcharge, shall be made to Joint Account, for each interlocking plant, to cover entire expense of inspections regularly made by traveling inspectors or attaches of the signal engineer's office, whose time is not a direct charge to the maintenance of the plant. Cost of repairs shall be included in Joint Account.

In Addition to the arbitrary, cost of inspections and tests shall be included in Joint Account when the work is performed by Signalmen, Maintainers, Testmen, Inspectors (whether from Division Forces or General Office), Maintenance Foremen or other employees below the rank of Signal Supervisor.

- D.** The appropriate percentages specified in Paragraph E, Composite Percentages, are applicable to gross wages to effect recovery of out-of-pocket costs for the following items of expense:

1. Vacation Allowance
2. Paid Holidays
3. Railroad Retirement and Unemployment Insurance Taxes
4. Supplemental Pensions
5. Health and Welfare Benefits

Note 1 - The percentages for Railroad Retirement and Unemployment Insurance Taxes and Supplemental Pensions are applied to gross wages, vacation and paid holiday allowances. All other percentages applied to gross wages only.

Note 2 - The percentages representing Vacation allowance and/or Paid Holidays will not be added when bills include actual Vacation and/or Holiday payments.

**E. COMPOSITE PERCENTAGES:**

When labor surcharges covered by this schedule are applicable, the following composite percentages will be used when appropriate. In other cases, the individual percentages will be applied:

- a.** To direct MW&S labor subject to the following percentages:  
Actual Labor .....\$100.00

1. Vacations 7.69% of \$100.00.....	\$ 7.69
2. Paid Holidays 3.94% of \$100.00.....	3.94
3. R.R.Ret. & Unempl. Ins. Taxes 24.03% of \$111.63 ..	26.82
4. Supplemental Pensions 1.03% of \$111.63 ..	1.15
5. Health & Welf. & Grp. Life Ins. 10.35% of \$100.00.....	10.35
6. Supervision, Admin. & Use of Tools 31.28% of \$100.00.....	31.28
	<u>81.23</u>

The composite percentage is 81.23%

b. To direct MofE labor subject to the following percentages:	
Actual Labor.....	\$100.00
1. Vacations 7.69% of \$100.00.....	\$ 7.69
2. Paid Holidays 3.94% of \$100.00.....	3.94
3. R.R.Ret. & Unempl. Ins. Taxes 24.03% of \$111.63 ..	26.82
4. Supplemental Pensions 1.03% of \$111.63.....	1.15
5. Health & Welf. & Grp. Life Ins. 10.35% of \$100.00.....	10.35
6. Supervision, Admin. & Use of Tools 37.67% of \$100.00.....	37.67
	<u>87.62</u>

The composite percentage is 87.62%

c. To direct T-RL labor subject to the following percentages (Including holidays):	
Actual Labor.....	\$100.00
1. Vacations 7.69% of \$100.00.....	\$ 7.69
2. Paid Holidays 3.94% of \$100.00.....	3.94
3. R.R.Ret. & Unempl. Ins. Taxes 24.03% of \$111.63 ..	26.82
4. Supplemental Pensions 1.03% of \$111.63.....	1.15
5. Health & Welf. Grp. Life Ins. 10.35% of \$100.00 ..	10.35
6. Supervision & Administration 18.82% of \$100.00...	18.82
	<u>68.77</u>

The composite percentage is 68.77%

d. To direct T-RL labor subject to the following percentages (Excluding holidays):	
Actual Labor.....	\$100.00
1. Vacations 7.69% of \$100.00.....	\$ 7.69
2. R.R.Ret. & Unempl. Ins. Taxes 24.03% of \$107.69.....	25.88
3. Supplemental Pensions 1.03% of \$107.69.....	1.11
4. Health & Welf. & Grp. Life Ins. 10.35% of \$100.00.....	10.35
5. Supervision & Administration 18.82% of \$100.00.....	18.82
	<u>63.85</u>

The composite percentage is 63.85%

Note: Add 1.14% to direct MW&S labor and 1.30% to direct MofE labor to cover company paid supplemental sickness insurance.

## **SECTION - II**

### **MATERIAL**

- A.** To the invoice price of all items of material, fuel and supplies used except treated ties, treated lumber and fuel for locomotives, add 15% to cover supervision, store expenses, inspection, accounting, purchasing, handling and transportation to point of use or point from which handled by work train.
- B.** In all cases of salvage credit allowed in connection with maintenance of operation, there shall first be deducted 15% to cover expenses in connection with accounting, handling, and transportation of such salvaged material. The deduction of 15% covers the handling of the material from the point where it is released to the storage point, however, handling incurred subsequent to the storage of the material at the concentration point is not covered, and is not a proper charge to Joint Account. The cost of handling salvaged material on joint tracks or facilities, is a proper charge to Joint Account.
- C.** When material used is hauled in excess of 350 miles, a further allowance of 5 cents per net ton mile for such excess mileage shall be included in addition to the 15% mentioned in Paragraph A; likewise, when material released is hauled in excess of 350 miles, a further allowance of 5 cents per net ton mile for such excess mileage shall be deducted in addition to the 15% provided in Paragraph B.
- D.** A reduction of 5% from secondhand rail and 10% from scrap rail and scrap other track material (OTM) shall be made from pattern weight when applied or released from joint tracks. The scale weight of scrap released may be used.
- E.** When a non-joint track breaks out of a joint track and unless in violation of contractual provisions, joint track shall be charged with 50% of the cost of the labor and material to repair or renew the turnout. The material considered as a part of the turnout is the frog, switch, guard rails, guard rail clamps, switch stand, switch lamps, switch ties and ballast and track fastenings. The cost of rail shall be charged 100% to the joint or non-joint segment of track as the case may be. The cost of labor shall be charged to the Joint Account on the same basis as material. Work train services shall be charged to the Joint Account on the same basis as labor.
- F.** Separation of material as between track and signal shall be based on the accounts to which the material is charged under the I.C.C. Classifications, that is, material charged to Investment Accounts "Ties," and "Other Track Material," Maintenance Accounts "Ties," and "Other Track Material," shall be classed as track material and charged to the road to whose track structure it is applied. Signal and interlocker material, and material for highway protection when part of the

joint interlocking plant, charged to Investment Account "Signals and Interlockers" and Maintenance Account "Signals and Interlockers" shall be classed as signal and interlocker material and charged to the roads on basis provided in the contract. Labor charges shall be divided on the same basis as material charges.

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### SECTION - III

#### TREATED TIES AND LUMBER:

Such elements of cost, as are not included in our book price of treated material shall be added thereto for billing purposes, and to this total shall then be added 15% to cover supervision, store expenses, inspection (except field inspection), purchasing, accounting and transportation over our line to point of use or point from which handled by work train, with a further allowance of 5 cents per net ton mile for the haul on ties and lumber to and from the treating plant over our line in excess of 350 miles.

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### SECTION - IV

#### REPAIRS AT SHOPS

- A. When repair work is performed by our Mechanical Department in shops (including manufacturing shops), or enginehouses, where we account for overhead through shop expenses as defined by the I.C.C. and where the plant facilities are not jointly owned or included in the valuation on which the tenant pays rental, taxes, etc., apply surcharge of 100% in lieu of the 37.67% surcharge specified in Section I to direct labor to cover shop expenses, interest, repairs, depreciation, insurance and taxes on the plant, as well as all other overhead and indirect expense.
- B. The 100% surcharge does not apply to work performed by shop employees away from such shop points, or to work, other than repairs, done at enginehouses such as preparation, cleaning and similar work in connection with dispatchments, or to repairs of freight or passenger cars made under A.A.R. Rules, or to such work as car inspection, car cleaning, coupling and uncoupling of trains, etc. In these instances, shop expense is not a proper charge to Joint Account; the percentages provided in Sections I and II will apply.
- C. The 100% surcharge does not include any expense outside of the shops but is in lieu of percentage provided in Section I insofar as labor expended in the shops is concerned.



The billing carrier should be compensated for the handling and transportation of material released from a joint facility to the scrap dock or shop where repairs are made and also from shop where such material is repaired and again installed in a joint facility. To cover this expense, the provisions of Section II apply unless the parties involved agree otherwise. This provision is effective if accounting is done when material is released and returned to the joint facility. If no accounting is done and material is merely taken from the facility and sent to shop for repairs and returned, the addition of 15% is not applicable but transportation charges, either at tariff rates or rate per ton mile, should be assessed to represent the cost of transporting the material.

In the case of material manufactured in shops, we will be compensated for the handling and transportation of material from the shop to the point where used and we will, therefore, add 15% to the price of the material when charging Joint Account.

- D. This surcharge covers all costs in connection with injuries to, or death of employees whose wages are chargeable to shop, store or overhead expenses at the time accident occurs, but does not cover such costs when the wages of employees injured are chargeable directly to the work performed at the time accident occurs.

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## SECTION - V

### FUEL FOR LOCOMOTIVES:

- A. There shall be added to the invoice price of fuel oil (including foreign line freight charges) 2.1 cents per gallon to cover the expense of purchasing, unloading, fueling, accounting and other undistributed items of expense, whether purchased from a local dealer or otherwise. There also shall be added home line freight charges at 5 cents per net ton mile, origin to destination. Fuel used for any purpose other than for propulsion shall be considered as supplies and billed under Section II.
- B. When our only haul is within a terminal (no switching charges having been collected from a road-haul carrier), we will include the amount of the local switching charge in Joint Account.
- C. The assessment of freight or switching, Paragraphs A and B, includes delivery to the site of the joint facility whether done by freight train, work train or switch engine; this precludes charging trackage over non-joint tracks.

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**SECTION - VI**

**GENERAL:**

- A. A surcharge of 1% to cover supervision, accounting and inspection shall be added to all outside party invoices when additives or surcharges are not provided for elsewhere in this schedule.
- B. Examples of items covered are invoices received covering contractor's services, utilities, postage, property taxes, personal expense payments, land purchase, rental of space, rental or lease of equipment and joint facility bills. This listing does not exclude items of a similar nature.
- C. Liability claim settlements are specifically excluded from the application of the 1% surcharge. Settlements include all payments made in connection with the liability.
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**SECTION - VII**

**WORK TRAIN OR WRECK TRAIN:**

Flat rate, including rental of one locomotive unit (all sizes and types), locomotive repairs, fuel and all supplies, engine and train or switch crew wages and supplies, all enginehouse expense, rental of a caboose and where applicable short crew allowances and productivity fund.

		<u>Rate Per Hour</u>	
		<u>Road</u>	<u>Yard</u>
Diesel...	3 person crew.....	\$160.00	\$163.25
	4 person crew without fireman.....	183.50	188.50
	3 person crew short crew.....	170.00	173.25
	5 person crew with fireman.....	206.75	212.00
	4 person crew short crew.....	193.25	196.75

**Note:** Rate is to be applied from time engine crew reports for duty until released or assigned to other work, except that engine crew shall not include time allowances for incidental services, such as inspection, making out reports, etc. Rate is to be applied for each hour or fraction thereof.

When more than one locomotive unit is required, an additional charge of \$81.25 per hour or fraction thereof will be billed for each additional unit which covers locomotive rental, repairs, fuel, supplies, servicing locomotives and additional wages paid crews.

When train is used or loaned for less than the normal assigned tour of duty and equipment is not utilized in other service during the twenty-four hour period beginning with the time starting for work on a joint facility or loaned for service to a borrowing carrier, nor the crew utilized in other service during their normal assigned tour of duty, charge applicable rate for Diesel per hour or fraction thereof for the time train was used; also \$22.50 per hour as rental of equipment and \$26.25 per hour for each crew member in road service or \$27.25 per hour for each crew member in yard service, as wages of the crew for the remainder of the normal assigned tour of duty. When called but not used, charge actual wages, plus usual labor surcharges, but no rental.

Where work or wreck train performs both joint and non-joint work during its tour of duty, the running and delay time to and from work shall be apportioned on basis of time worked on joint and non-joint work. The charge for running and delay time during progress of work shall be assigned to the work. Time paid for but not worked shall be apportioned on the basis of joint and non-joint work.

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**SECTION - VIII**

**DIESEL LOCOMOTIVE RATES:**

<u>Horsepower Category</u>	<u>Rental</u>	<u>Rate Per Hour</u> <u>Repairs &amp; Supplies</u>	<u>Total</u>
999 and Under H.P.	\$ 5.58	\$ 24.40	\$ 29.98
1000 - 1499 H.P.	5.92	30.50	36.42
1500 - 1749 H.P.	16.18	39.65	55.83
1750 - 1999 H.P.	11.80	45.75	57.55
2000 - 2499 H.P.	15.81	54.90	70.71
2500 - 2999 H.P.	11.24	67.10	78.34
3000 - 3599 H.P.	30.80	80.50	111.30
3600 and Over H.P.	35.85	87.85	123.70

- A. Crew wages will be billed on actual wages paid including overtime and constructive allowances plus the applicable surcharges.
- B. Repairs and Supplies - The rates consist of 31% Repairs, 60% Fuel and 9% Servicing.

## **SECTION - IX**

### **TRACKAGE OF TRAIN UNDER OWN POWER, OVER NON-JOINT TRACKS:** **Per Mile \$31.67**

**Note:** When movement of work or wreck train is made for the purpose of performing service in joint facility territory, charge trackage to Joint Account at the rate per train mile, or fraction thereof, from starting point (where "train" is made up or put away, usually the point from which or to which "train mileage" statistics are computed) to junction with joint track and return; no charge will be made if the distance is less than one mile and no trackage charge will be made for light engines. When work or wreck train performs both joint and non-joint work during its tour of duty, charge Joint Account with proportion of trackage over non-joint tracks (excluding any mileage on which running work such as snow plow or flanger service, weed burning, etc., is performed, in either the going or return trip) on basis of time worked on joint and non-joint work. The charge to Joint Account shall not exceed the amount chargeable for the round trip between regular headquarters (starting point) and joint facility computed on mileage basis. When a work or wreck train incidentally picks up or delivers material at a joint facility, along with other handling of material, no charge for trackage will be made to Joint Account.

When work or wreck equipment is used in joint maintenance or operation work, the locomotive, train or car mileage made on joint tracks shall be excluded from mileages for division of joint expenses.

When movement of work or wreck train is made for the purpose of performing service in joint facility territory, for which tenant companies are solely responsible, charge at the rate per train mile, or fraction thereof, from starting point to junction with joint track, and return. The locomotive, train or car mileage as may be appropriate, made by the work or wreck train on the joint tracks shall be added to the tenant company's mileage used in the regular division of expenses of maintenance and operation of the facility for the current month.

## SECTION - X

TRACKAGE OF EQUIPMENT UNITS, IN REVENUE TRAINS.....Per Mile \$1.11.

Note: When any unit of equipment, including work cars, is moved in revenue trains to or from the work site, charge at the rate herein specified, with a maximum of 250 miles for the haul in both directions, i.e., both to and from the work site. Where the haul is less than 50 miles, a minimum of 50 miles will be charged.

## SECTION - XI

MEALS FURNISHED FROM COMMISSARY CARS.....Each Meal \$5.95

## SECTION - XII

### EQUIPMENT

		<u>PER DAY</u>	
		<u>Total</u>	<u>Rep. &amp; Sup.</u>
1. ADZERS:			
A. Single Head, Self-Propelled.....\$ 59.00			
B. Multiple Head, Self-Propelled..... 709.00			
2. AIR COMPRESSORS:			
A. Non-Self-Propelled:			
1. Less than 125 cu. ft.....	\$ 17.00		\$ 10.00
2. From 125 cu. ft. to 200 cu. ft.			
(incl.).....	45.00		28.00
3. From 201 cu. ft. to 300 cu. ft.			
(incl.).....	63.00		39.00
4. From 301 cu. ft. to 500 cu. ft.			
(incl.).....	58.00		48.00
5. 501 cu. ft. and over.....	106.00		69.00

		<u>PER DAY</u>	
		<u>Total</u>	<u>Rep. &amp; Sup.</u>
B. Self-Propelled:			
1.	To 200 cu. ft. (incl.).....	47.00	39.00
2.	From 201 cu. ft. to 500 cu. ft. (incl.).....	127.00	95.00
3.	501 cu. ft. and over.....	200.00	102.00
=====			
3. ANCHOR APPLICATORS:			
	Semi-automatic & Manual.....	\$ 80.00	\$ 59.00
=====			
4. BALLAST CRIBBING MACHINES:			
A.	Mono-rail Type (Rail Gang Use).....	\$ 57.00	\$ 35.00
B.	Rail Mounted.....	290.00	68.00
=====			
5. BALLAST PLOWS & SLEDS.....			
		\$806.00	\$285.00
=====			
6. BALLAST REGULATORS AND CONDITIONERS:			
	Ballast Regulator or Maintenance Car.....	\$242.00	\$142.00
=====			
7. BRUSH CUTTERS:			
	Self-Propelled - on and/or off track.....	\$341.00	\$213.00
=====			
8. CARS:			
A.	Ballast Cars.....	\$ 27.00	\$ 6.00
	(Not Commercial Freight		
B.	Cabooses.....	25.00	14.00
C.	Dump Cars. (Air Operated).....	83.00	12.00
D.	Non-Occupied Cars.....	10.00	3.00
	(Includes: Tool, Flat, Block, Truck, Tie, Water and Similar Cars)		

		<u>PER DAY</u>	
		<u>Total</u>	<u>Rep. &amp; Sup.</u>
<b>8. CARS: (Cont'd)</b>			
<b>E. Occupied Cars:</b>			
1.	Uni-Vans.....	50.00	17.00
2.	Coach Style.....	47.00	21.00
F.	Ordinary Commercial Freight.....	19.00	5.00
<b>G. Scale Test Cars:</b>			
1.	Non-Self-Propelled.....	20.00	11.00
2.	Self-Propelled.....	105.00	26.00
<b>H. Welded Rail Cars:</b>			
1.	Pusher Unit-Threader Cars.....	219.00	103.00
2.	Pusher Unit-Companion Cars.....	127.00	77.00
3.	Pusher Unit-Hoist Cars.....	193.00	103.00
4.	Pusher Unit-Power Cars.....	749.00	412.00
5.	Unloading Unit-Threader Cars.....	67.00	23.00
6.	Unloading Unit-Roller Cars.....	29.00	2.00
7.	Loading & Unloading Units Anchorage Cars.....	41.00	6.00
8.	Loading & Unloading Units-Other Welded Rail Cars.....	25.00	4.00
9.	Threader Truck Rail Guide.....	21.00	6.00

**9. CARTS:**

A.	Anchor.....	\$ 26.00	\$ 14.00
B.	Spike.....	22.00	2.00

**10. COMPACTORS:**

	Ballast, Crib & Shoulder.....	\$251.00	\$104.00
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**11. DERRICK CARS:**

	Push Car Mounted, Hydraulic.....	\$ 8.00	\$ 5.00
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		<u>PER DAY</u>	
		<u>Total</u>	<u>Rep. &amp; Sup.</u>
<b>12. DERRICK AND CRANES:</b>			
A. Burro Cranes or Equivalent:			
1. Less than 10 tons.....	\$151.00		\$109.00
2. 10 tons and over.....	391.00		174.00
B. Other Cranes, Rail Mounted:			
1. 100 tons or less.....	419.00		232.00
2. 250 tons and over.....	880.00		419.00
C. Crawler, Rubber, Off-On Track:			
1. 25 tons or less.....	331.00		200.00
2. 50 tons and over.....	677.00		237.00
D. Multicrane, Rubber Tired, Off-On Track..	382.00		200.00
=====			
<b>13. DITCHERS:</b>			
A. Spreader-Air.....			
	\$161.00		\$ 81.00
B. Spreader-Hydraulic.....			
	511.00		155.00
C. Gradall Type, Hy-Rail.....			
	457.00		217.00
=====			
<b>14. EARTH BORING MACHINES:</b>			
Self-contained, Non-Self-Propelled.....	\$ 35.00		\$ 21.00
=====			
<b>15. GAUGE THREADERS:</b>			
Standard or wide.....	\$296.00		\$111.00
=====			
<b>16. GAUGING MACHINES:</b>			
Complete with pre-gauger including bits...	\$ 77.00		\$ 49.00
=====			
<b>17. GENERATORS, ELECTRIC:</b>			
A. Up to 4999 Watts.....			
	\$ 5.00		\$ 4.00
B. 5000 Watts and Over.....			
	15.00		12.00
=====			



	<u>Total</u>	<u>PER DAY</u> <u>Rep. &amp; Sup.</u>
18. GRADERS:		
All, with attachments.....	\$117.00	\$110.00
=====		
19. HAMMER, JACK.....	\$ 16.00	\$ 6.00
=====		
20. JACKS, POWER TRACK.....	\$ 25.00	\$ 20.00
=====		
21. LOADER, SCRAP:		
On-Track.....	\$131.00	\$ 65.00
=====		
22. MOTOR CARS.....	\$ 13.00	\$ 10.00
=====		
23. RAIL GRINDERS, PORTABLE.....	\$ 16.00	\$ 11.00
=====		
24. RAIL HEATERS.....	\$119.00	\$ 86.00
=====		
25. RAIL LIFTERS.....	\$ 29.00	\$ 17.00
=====		
26. RAIL PULLER EXPANDERS:		
Hydraulic.....	\$ 17.00	\$ 8.00
=====		

	PER DAY	
	Total	Rep. & Sup.
<b>27. RAIL SAWS:</b>		
A. Non-Abrasive.....	\$ 7.00	\$ 5.00
B. Abrasive.....	15.00	13.00
C. Abrasive, Rail Mounted.....	94.00	69.00
=====		
<b>28. RAIL SAW-DRILL.....</b>	<b>\$ 4.00</b>	<b>\$ 1.00</b>
=====		
<b>29. SNOWMOBILES.....</b>	<b>\$ 37.00</b>	<b>\$ 29.00</b>
=====		
<b>30. SNOW PLOWS AND FLANGERS:</b>		
A. Work Cars with Fixed Plows and Flangers.....	\$ 274.00	\$ 26.00
B. Plows, Fixed, Wings Operated by Air....	352.00	232.00
C. Plows, Rotary.....	1,517.00	350.00
D. Fan Snow Blower.....	212.00	107.00
E. Jet Snow Blower.....	835.00	439.00
(Rate does not include jet fuel)		
=====		
<b>31. SPIKE DRIVERS:</b>		
A. Non-Self Propelled.....	\$ 48.00	\$ 31.00
B. Self-Propelled, Multiple Head.....	297.00	190.00
=====		
<b>32. SPIKE PULLERS:</b>		
A. Non-Self-Propelled.....	\$ 30.00	\$ 22.00
B. Self-Propelled.....	73.00	45.00
=====		
<b>33. TIE CRANES.....</b>	<b>\$ 137.00</b>	<b>\$ 90.00</b>
=====		

	PER DAY	
	Total	Rep. & Sup.
34. TIE CUTTERS:		
A. Non-Self-Propelled.....	\$ 16.00	\$ 10.00
B. Self-Propelled Production.....	239.00	155.00
=====		
35. TIE DESTROYERS.....	\$ 632.00	\$ 425.00
=====		
36. TIE DRILLS.....	\$ 29.00	\$ 23.00
=====		
37. TIE PLUG INSERTERS.....	\$ 67.00	\$ 41.00
=====		
38. TIE REMOVERS AND/OR TIE INSERTERS:		
A. Less than 30 H.P.....	\$ 33.00	\$ 26.00
B. 30 H.P. and over.....	169.00	100.00
C. Production Tie Injectors.....	344.00	221.00
=====		
39. TIE SPACERS.....	\$ 153.00	\$ 85.00
=====		
40. TIE SPRAYERS: (Exclude Creosote).....	\$ 18.00	\$ 11.00
=====		
41. TIE TAMPERS:		
A. Self-tamping jacks (includes track surfacers).....	\$ 218.00	\$ 147.00
B. Spot and/or switch, mechanical indicators.....	259.00	160.00
C. Spot and/or switch, electronic indicators.....	330.00	176.00
D. Production:		
1. Without jacks or liners.....	309.00	218.00
2. Automatic with jacks and surfacing indicator without liners.....	426.00	302.00
3. Automatic with liner and jacks electronic indicator.....	511.00	420.00
4. Switch tamper, high production with jacks and liners.....	753.00	458.00

		<u>PER DAY</u>	
		<u>Total</u>	<u>Rep. &amp; Sup.</u>
<b>42. TRACK BROOMS:</b>			
Self-Propelled.....	\$136.00		\$ 84.00
=====			
<b>43. TRACK CLEANERS</b>			
Track mounted.....	\$694.00		\$444.00
=====			
<b>44. TRACK WRENCHES:</b>			
A. Single Head.....	\$ 21.00		\$ 13.00
B. Multiple Head.....	222.00		167.00
=====			
<b>45. TRACTORS, CRAWLER OR RUBBER MOUNTED:</b>			
A. Bulldozer - under 60 HP.....	\$ 81.00		\$ 66.00
B. Bulldozer - over 60 HP.....	236.00		95.00
C. Front-End loader 2-1/2 yds. & under....	141.00		105.00
D. Front-End loader with backhoe.....	159.00		116.00
E. Backhoe - 1 yd.....	218.00		152.00
F. Speed swing.....	290.00		167.00
G. Tractors-Utility with Attachments.....	151.00		110.00
=====			
<b>46. TRAILERS:</b>			
A. Rail Mounted.....	\$ 31.00		\$ 6.00
B. Rubber Tired.....	9.00		2.00
=====			
<b>47. TRENCHING MACHINES.....</b>	<b>\$ 54.00</b>		<b>\$ 22.00</b>
=====			
<b>48. UNDERCUTTERS:</b>			
Switch.....	\$876.00		\$402.00
=====			

		PER DAY	
	Total	Rep.	Sup.
49. UNDERCUTTER CLEANER:			
Track and Ballast.....	\$3,718.00	\$2,249.00	

50. VEHICLES, AUTOMOBILES, TRUCKS AND BUSES:

A. Automobiles:

1. Sedans - Other.....	\$ 24.00	\$ 11.00
2. Sedans - Police.....	47.00	26.00

B. Buses - 17 thru 37 capacity.....	34.00	18.00
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C. Station Wagons:

1. Standard.....	39.00	24.00
2. High-Rail.....	36.00	16.00

D. Trucks:

1. Dump 19,000 thru 25,000 GVW.....	46.00	26.00
2. Dump Hi-Rail 19,000 GVW.....	61.00	23.00
3. Dump 29,000 thru 31,000 GVW.....	77.00	35.00
4. Dump Hi-Rail 31,000 GVW.....	96.00	38.00
5. Dump Three-Way.....	219.00	59.00
6. Pick-up less than 10,000 GVW.....	32.00	19.00
7. Pick-up Hi-Rail less than 10,000 GVW.....	36.00	19.00
8. Refueling.....	80.00	37.00
9. Semi-Tractors.....	99.00	49.00
10. Stake/Platform 19,000 thru 25,000 GVW.....	39.00	17.00
11. Stake/Platform over 26,000 GVW.....	70.00	31.00
12. Strato Towers (Snorkle).....	140.00	22.00
13. Track Inspection Hi-Rail Less than 10,000 GVW.....	49.00	28.00
14. Truck Clearance.....	266.00	28.00
15. Utility Less Than 10,000 GVW.....	32.00	17.00
16. Utility Hi-Rail less than 10,000 GVW.....	39.00	21.00
17. Utility 10,000 thru 21,000 GVW.....	53.00	25.00
18. Utility Hi-Rail 16,000 GVW.....	65.00	30.00
19. Utility over 26,000 GVW.....	79.00	35.00
20. Utility Hi-Rail over 26,000 GVW....	100.00	42.00
21. Van less than 10,000 GVW.....	30.00	16.00
22. Van 17,000 thru 20,000 GVW.....	58.00	30.00
23. Van over 36,000 GVW.....	79.00	46.00
24. Welding 16,000 thru 22,000 GVW.....	63.00	33.00
25. Welding Hi-Rail 10,000 thru 19,000 GTW.....	64.00	27.00
26. Wreck with crane over 26,000 GVW....	89.00	43.00
27. Bridge Inspection with Crane Hi-Rail.....	583.00	84.00

	<u>Total</u>	<u>PER DAY</u> <u>Rep. &amp; Sup.</u>
<b>51. WEED BURNERS</b>		
Self-Propelled (snow-melter).....	\$258.00	\$187.00
=====		
<b>52. WEED MOWERS - Self-Propelled.....</b>	<b>\$ 52.00</b>	<b>\$ 45.00</b>
=====		
<b>53. WELDERS, ELECTRIC:</b>		
A. Strick Electrode.....	\$ 15.00	\$ 9.00
B. Automatic Wire Feed.....	26.00	19.00
=====		
<b>54. WELDING KIT APPLICATOR.....</b>	<b>\$ 7.00</b>	<b>\$ 4.00</b>
=====		
<b>55. WELDING SHEARS.....</b>	<b>\$ 12.00</b>	<b>\$ 8.00</b>
=====		
=====		

## CONRAIL TRACKAGE RIGHTS AGREEMENT

### AMENDMENT NO. 1

This amendment agreement is between the Massachusetts Bay Transportation Authority (MBTA) and Consolidated Rail Corporation (Conrail). The purpose of this amendment is to amend the "Trackage Rights Agreement" between the parties dated November 20, 1986, but effective July 1, 1985, to provide for additional trackage rights on the so-called East Route Main Line and East Boston Branch.

Effective July 20, 1989, the parties hereby covenant and agree as follows.

1. ADDENDUM 1 - MBTA RAIL PROPERTIES - Category A is amended by extending Conrail's use of the East Route Main Line by replacing existing Reading Jct. to Revere Interlocking with Reading Jct. to FX Interlocking and by replacing existing Milepost 1.36 - 2.75 with Milepost 1.26 - 6.28.
2. ADDENDUM 1 - MBTA RAIL PROPERTIES - Category B is amended by extending Conrail's use of the East Boston Branch by replacing existing Revere Interlocking to East Boston with Revere Interlocking at the connection to the East Route Main Line and Conrail's property at Milepost 2.2 and by replacing existing Milepost 0.0 - 1.85 with Milepost 0.0 - 2.2.
3. Conrail shall provide MBTA reimbursement for operations between Milepost 2.85 and 6.28 in accordance with Article 6 of the "Trackage Rights Agreement".

4. Conrail's right to use of said rail lines is contingent upon the continuing full force and effect of a letter agreement between Boston and Maine Corporation, Springfield Terminal Railway Company and Conrail dated July 20, 1989, attached hereto.

IN WITNESS WHEREOF, Conrail and the MBTA have caused this amendment agreement to be executed by their respective duly authorized officers.

Approved as to form:

By:

  
\_\_\_\_\_  
Gregory C. Flynn  
General Counsel, MBTA *ENC*

MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

By:

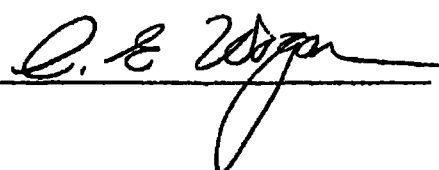
  
\_\_\_\_\_  
Thomas P. Glynn  
General Manager

ATTEST:

CONSOLIDATED RAIL CORPORATION

  
\_\_\_\_\_  
Kathleen M. H. Hite

By:

  
\_\_\_\_\_  
C. E. Wagon



# **CONRAIL TRACKAGE RIGHTS AGREEMENT**

## **AMENDMENT NO. 2**

This Amendment Agreement is between the Massachusetts Bay Transportation Authority ("MBTA") and Consolidated Rail Corporation ("CONRAIL"). The purpose of this Agreement is to amend the July 1, 1985, "Trackage Rights Agreement" (Basic Agreement) to provide for resolution of issues relating to the so-called Shore Line.

WHEREAS, Section 1.02(k) of the Basic Agreement deferred resolution of certain issues related to the parties' respective rights and obligations as to the former Boston and Providence Main (Shore) Line right-of-way; and

WHEREAS, the parties hereto have now reached agreement on the resolution of their past and future rights and obligations relative to the Shore Line;

NOW THEREFORE, in consideration of the terms and conditions contained herein, effective July 1, 1985, the parties hereby covenant and agree as follows:

### **Section 1. ADDENDUM 1 - MBTA Rail Properties**

Category A is amended by adding the Shore Line, (Main Line - Boston to New Haven), Readville (Mile Post 219.2) to Rhode Island/Massachusetts State Line (Mile Post 190.8) to be jointly used with Conrail and to be maintained at a Class 3 level.

### **Section 2. Compensation - Car Miles**

With regard to compensation and Conrail car miles operated on the Shore Line, Conrail shall pay MBTA 25.2 cents per car mile for the first 500,000 car miles Conrail operates each calendar year and 81 percent of that rate, as that rate may change from time to time, for all car miles it operates over 500,000 over said Shore Line. This rate shall be escalated annually in accordance with the provisions of Section 6.03 of the Basic Agreement and shall apply solely to Shore Line car miles.

### **Section 3. Freight-only Turnouts**

- a. A listing of freight-only turnouts connected to the Shore Line and used by Conrail as of October 1, 1991, is attached hereto as Exhibit 1. This listing will be amended on a month-to-month basis, as necessary, in order to remove turnouts no longer required by Conrail or to add turnouts newly installed.

- b. Conrail shall pay MBTA \$4,589.00 per year as compensation in full for all maintenance of each existing freight-only turnout listed on Exhibit 1. This amount shall be escalated annually in accordance with the provisions of Section 6.03 of the Basic Agreement, which applies to the Base Charge rounded to the nearest whole dollar. It is understood that this amount shall constitute all maintenance, including routine replacement for existing turnouts, and MBTA shall not seek additional compensation for maintenance on these turnouts, excepting, however, those turnouts which must be replaced as a result of an incident determined under the Liability Indemnification provisions of ARTICLE 7 of the Basic Agreement as Conrail's liability.
- c. MBTA shall submit monthly to Conrail, an invoice reflecting the number of turnouts being billed for that service month and the monthly maintenance charge per turnout (annual fee divided by 12). Conrail shall immediately process such invoices for payment. In the event of any disputes as to the billable number of turnouts, Conrail shall pay the invoiced amount and request adjustment in the following month's invoicing, which adjustment shall not be unreasonably withheld. Invoices shall be addressed to Conrail as follows:

General Superintendent  
Contract Administration  
Consolidated Rail Corporation  
1099 One Liberty Place  
Philadelphia, PA 09103  
ATTN: R. Gay

- d. In the event that Conrail notifies MBTA of its desire to remove a freight-only turnout listed on Exhibit 1, that turnout shall be removed from Exhibit 1 and dropped from invoicing for the service month immediately following the month such letter of notification is received by MBTA from Conrail. Such notice shall be addressed to MBTA as follows:

Director, Railroad Operations  
Massachusetts Bay  
Transportation Authority  
Ten Park Plaza  
Boston, MA 02116  
ATTN: Finance Unit

Upon notification from Conrail, MBTA shall have sole discretion regarding retention or removal of the turnout.

- e. In the event Conrail desires to have a new turnout installed that does not exist on the effective date of this agreement or that has been removed pursuant to Section 3.d above, all construction charges associated therewith shall be determined in accordance with the provisions of Section 5.05 of the Basic

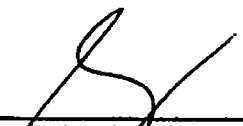
Agreement. Exhibit 1 shall be changed to reflect such additional turnout and the annual maintenance charge for such turnout installed pursuant to this paragraph, shall be at the agreed upon annual maintenance fee specified in Section 3.b above.

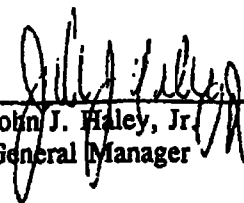
Except as otherwise stated above, all applicable provisions of the Basic Agreement shall remain in effect.

IN WITNESS WHEREOF, Conrail and the MBTA have caused this Amendment Agreement No. 2 to be executed by their respective duly authorized officers.

Approved as to form:

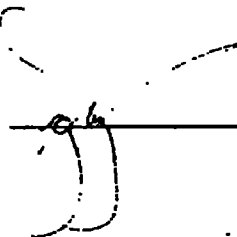
MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

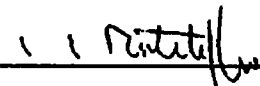
  
\_\_\_\_\_  
Gregory C. Flynn  
General Counsel

By:   
\_\_\_\_\_  
John J. Haley, Jr.  
General Manager

ATTEST:

CONSOLIDATED  
RAIL CORPORATION

  
\_\_\_\_\_  
Attest

By:   
\_\_\_\_\_  
Attest

SHORE LINE - STATE LINE TO READVILLE  
FREIGHT ONLY TURNOUTS  
OCTOBER 1, 1991

<u>MilePost</u>	<u>Track Number</u>	<u>Location</u>	<u>Tenant</u>
192.55	2	Sth. Attleboro	Pascale Trucking
192.68	1	Sth. Attleboro	American Wire
195.78	1	Hebronville	Furman Lumber
196.30	1	Attleboro (Thatcher)	Team Track
197.95	4	Attleboro	Fortifibre
197.97	4	Attleboro	Fortifibre
198.01	4	Attleboro	Fortifibre
202.50	1	Mansfield	Industrial Park (Zayre)
203.7	1	Mansfield	American Paper
203.8	2	Mansfield	Bliss & Laughlin
204.3	2	Mansfield	Old 4-Industrial
204.4	1	Mansfield	B&P Lead
213.9	1	Canton	Cumberland Farms
215.2	2	Canton	Grinnel
216.30	1	Westwood	Rt. 128 Ind. Park
217.30	1	Westwood	Rt. 128 Ind. Park
218.30	1	Readville (Transfer)	Yard Lead

17 Turnouts

CONRAIL-MBTA  
TRACKAGE RIGHTS AGREEMENT  
AMENDMENT #1

This amendment, effective July 12, 1993, is between the Massachusetts Bay Transportation Authority (MBTA) and Consolidated Rail Corporation (Conrail) and will amend the Trackage Rights Agreement, dated July 1, 1985, in the following respect:

(1) Notwithstanding the provisions of Sections 7.04 (only insofar as it applies to MBTA Station property) and 7.07 of the 1985 Trackage Rights Agreement between MBTA and Conrail, MBTA shall defend, indemnify and save harmless Conrail and Conrail Employees from any and all liability, damage or expense of any kind whatsoever, including reasonable attorneys' fees, arising out of injury to or death of any person, or arising out of any loss of, damage to or destruction of any property of any person (including MBTA platform property), resulting from the collision of a Conrail freight car with its load shifted, or a freight car equipped with a plug door and an MBTA handicap platform with a retractable edge, irrespective of whether the operation of such shifted loads, or box cars with open "plug doors" is determined to be Conrail negligence or fault. This provision shall not apply to excess dimension, wide load shipments covered by paragraph (2) below.

(2) In handling excess dimension, wide load movements over Rail Properties on which MBTA has installed a handicap platform with a retractable edge, Conrail shall follow the operating

procedures set forth in the Attachment hereto. The provisions of the Trackage Rights Agreement shall govern with respect to this paragraph.

(3) The foregoing shall apply only to West Natick, MA station where MBTA is installing or will install a handicap platform. It is hereby understood, and agreed by both parties hereto that the MBTA's acceptance of the foregoing shall be without prejudice to the right of either party to renegotiate its terms and is not intended to establish precedent for negotiation of future terms and conditions related thereto.

(4) (a) The provisions of this Amendment #3 shall expire either upon reconfiguration of the accessibility improvements at West Natick or in the event that the provisions herein are superceded, whichever shall occur first.


(b) Notwithstanding paragraph 4(a) above, on or after July 12, 1998, either party may request that the terms of this Amendment #3 shall be renegotiated, in good faith, and in a timely manner, by the parties hereto. If the parties are unable to agree, either party may refer the matter to binding arbitration. If arbitration is invoked, the matter shall be conducted according to the rules and procedures of the American Arbitration Association, unless the parties agree otherwise. The matter shall be subject to expedited proceedings at the request of either party.

Except for the foregoing paragraphs, all other provisions, terms and conditions of the 1985 Trackage Rights Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Conrail and the MBTA have caused this  
Amendment to be executed by their respective authorized officers.

MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY


By:

  
\_\_\_\_\_  
Michael T. Burns  
Assistant General Manager  
for Railroad Operations

Dated: JULY 14, 1993

CONSOLIDATED RAIL CORPORATION

By:

  
\_\_\_\_\_  
R. Paul Carey

Dated: JULY 16, 1993

Attachment

## OPERATING PROCEDURE

### Handicap Platforms with Retractable Edges

When Conrail desires to move an excess dimension wide load over rail properties on which a handicap platform with a retractable edge (increases centerline track to edge of platform clearance from 5'7" to 7'3") is located, the following procedure will be strictly adhered to:

1. Conrail will notify the MBTA trouble desk (617-722-3628) with the train number and time of movement, at least 24 hours in advance of the time the movement is scheduled to pass the retractable edge platform.
2. Wide load movements will occur anytime except at commuter rail rush hours which are Monday thru Friday 0600 to 0930 hrs. and 1600 to 1900 hrs. Midday moves on weekdays are encouraged.
3. MBTA maintenance forces will notify the Operating Contractor's Assistant Superintendent Transportation through the Operating Contractor's Chief Dispatcher that the handicap platform is out of service for all use. After information is acknowledged the MBTA forces will raise and lock the retractable platform edges. They will also notify the Conrail dispatcher that 7'3" clearance is available, specifying the day and time when available, which shall be no less than one (1) hour before the estimated time of arrival for the wide load movement.
4. After passage of the wide load MBTA forces will seek permission from the Conrail dispatcher to lower the retractable platform edge for normal 5'7" clearance.
5. After receiving Conrail dispatcher direction, MBTA forces will lower and lock the retractable platform edges.
6. MBTA forces will notify the Conrail Dispatcher that the platform edges are down and locked and will specify the date and time completed.
7. MBTA forces will notify the Operating Contractor's Assistant Superintendent Transportation, through the



OPERATING PROCEDURE (Cont'd)

Handicap Platforms with Retractable Edges

Operating Contractor's Chief Dispatcher and the MBTA trouble desk that the handicap platform is back in service to accommodate physically challenged passengers.

8. If MBTA fails to discharge its responsibilities as set forth above within 2 hours of the scheduled time referenced in Section 1 hereof, Conrail may, but shall not be required to, operate and restore the platform edge to permit passage of the excess dimension wide load, provided that prior to any operation of the platform edges, Conrail forces notify the MBTA trouble desk at (617-722-3628). MBTA assumes responsibility for Conrail's direct labor expenses.

**EXHIBIT D**

**VERIFIED STATEMENT  
OF  
STEVEN POTTER**

My name is Steven Potter. I am Assistant Vice President Network Planning and Joint Facilities for CSX Transportation, Inc. ("CSXT"). I have 28 years experience in the rail industry and have served in my current position since April 2009. As Assistant Vice President Network Planning and Joint Facilities, my responsibilities include directing and overseeing Operations Planning, including the network capacity analysis and capital budgeting, passenger train policy development and contract negotiations, joint facility agreements with other railroads, and passenger access and operating agreements.

CSXT is a Class I rail carrier operating 21,000 route miles of rail lines in 23 states east of the Mississippi River, the District of Columbia and the Canadian Provinces of Ontario and Quebec. Based in Jacksonville, Florida, CSXT is the largest railroad in the eastern United States providing rail services to more than 70 river, ocean and lake ports, as well as more than 200 short line railroads.

CSXT currently owns and operates (A) the South Coast Lines, consisting of (1) the New Bedford Subdivision, which is 18.4 miles between milepost QN 13.40 at Cotley Jct. and milepost QN 31.80 at New Bedford, (2) the Fall River Subdivision, which is 14.2 miles between milepost QNF 0.00 at Myricks and QNF 14.20 at Fall River, and (3) 0.08 miles of the North Dartmouth Industrial Track between milepost QND 0.00 and QND 0.08, collectively a distance of approximately 32.68 miles (the "South Coast Lines")<sup>1</sup>; (B) the Grand Junction Branch, 4.87

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<sup>1</sup> Related to the sale of the permanent freight easement over the South Coast Lines to Mass Coastal, CSXT will grant overhead trackage rights to Mass Coastal on the line between Taunton,

miles between milepost QBG 0.00 and milepost QBG 2.70 and between milepost QBG 5.70 and milepost QBG 7.87 (the "Grand Junction Branch"); and (C) the Boston Terminal Running Track, 1.10 miles between milepost QBB 0.00 and milepost QBB 1.10 (the "Boston Terminal Running Track"). In addition CSXT owns the real estate only, not the tracks and materials, between milepost QND 0.08 and milepost QND 6.00 over which the Bay Colony Railroad currently operates (the "Bay Colony Land," and collectively with the South Coast Lines, the Grand Junction Branch, and the Boston Terminal Running Track, the "First Closing Lines"). CSXT also owns and operates the Framingham to Worcester segment of the Boston Main Line, extending approximately 22.92 miles between milepost QB 21.38 and milepost QB 44.30. In addition, CSXT operates over, maintains and dispatches the 9.71-mile section of the Boston Main Line between milepost QB 1.12 and milepost QB 10.83, but CSXT owns only the track and material on this line segment, not the underlying real estate (CSXT already has a permanent freight service easement over this line segment).<sup>2</sup> The above-described sections of the Boston Main Line will be referred to collectively as the "Second Closing Lines," and will be referred to collectively with the First Closing Lines as the "Railroad Assets". A map showing the Railroad Assets is attached.

CSXT has reached agreement with the Commonwealth of Massachusetts, acting by and through the Massachusetts Department of Transportation ("Commonwealth"), to sell to the

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approximately milepost QN 11.6 and Mass Coastal's connecting line, approximately milepost QN 13.4, and between the connection to milepost QN 13.3, which is milepost QNB 13.3, and near Middleboro, milepost 20.4, a distance of 8.9 miles (the "Mass Coastal Trackage Rights").

<sup>2</sup> The real estate between milepost QB 1.12 and milepost QB 10.83 is owned by the Massachusetts Turnpike Authority, and CSXT enjoys access over that real estate for purposes of continued rail operations through an easement.

Commonwealth the Railroad Assets.<sup>3</sup> The Commonwealth already operates commuter rail service over the Grand Junction Branch and the Second Closing Lines through the Massachusetts Bay Transportation Authority ("MBTA"). The Commonwealth plans to continue and expand commuter operations, and is studying extending commuter operations over the South Coast Lines, which are currently freight only.

The sale of the Railroad Assets to the Commonwealth will occur in two steps. At the First Closing, CSXT's interests in the First Closing Lines will be conveyed to the Commonwealth. At the Second Closing, CSXT's interests in the Second Closing Lines will be conveyed to the Commonwealth.

As part of its sale agreement with the Commonwealth, CSXT will reserve a permanent freight easement over the Grand Junction Branch, the Boston Terminal Running Track, the Framingham to Worcester segment of the Second Closing Lines and the South Coast Lines, and it will retain its existing permanent freight easement over that portion of the Second Closing Lines between QB 1.12 and QB 10.83. CSXT will then immediately convey the permanent easement over the South Coast Lines to the Massachusetts Coastal Railroad, LLC ("Mass Coastal"). CSXT will continue to fulfill its common carrier obligations on the Grand Junction Branch, Boston Terminal Running Track, and the Second Closing Lines. Mass Coastal will have the common carrier obligation relating to the South Coast Lines by virtue of its acquisition, subject to Surface Transportation Board ("Board") approval, of the permanent freight easement

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<sup>3</sup> The tracks and materials situated on the Second Closing Lines, which constitute the yard lead tracks at Framingham Yard, Westborough Yard and Worcester Yard (the "Yard Lead Tracks") will be retained by CSXT and will therefore be excluded from the sale of the Lines. The Yard Lead Tracks are freight only tracks that run parallel to the Boston Main Line.

on that Line. Maintenance and dispatching arrangements for the South Coast Lines will be governed by an agreement between MBTA and Mass Coastal.

The Commonwealth will have no right to conduct common carrier freight operations on the Railroad Assets. The parties' agreements make clear that CSXT retains the common carrier obligations through its permanent freight easement for the Grand Junction Branch, the Boston Terminal Running Track and the Second Closing Lines, and that Mass Coastal will acquire CSXT's permanent freight easement and concomitant common carrier rights and obligations for the South Coast Lines. The Commonwealth is not assuming any common carrier obligations to shippers on the Railroad Assets, nor will the Commonwealth have the right to interfere unreasonably with (i) the common carrier obligations that CSXT is retaining on the Grand Junction Branch, the Boston Terminal Running Track and the Second Closing Lines, nor (ii) the common carrier obligations that Mass Coastal is acquiring from CSXT on the South Coast Lines.

Joint freight and passenger operations have been conducted over the Railroad Assets, except for the South Coast Lines, for many years. Operations over the Boston Main Line between Boston and Framingham are governed by a 1985 Trackage Rights Agreement between MBTA and CSXT, as successor to Consolidated Rail Corporation ("Conrail"). Operations over the Second Closing Lines west of milepost 22.4 are governed by a 1994 Trackage Rights Agreement between MBTA and CSXT. I personally participated on behalf of CSXT in the negotiation of the 2009 Operating Agreement between MBTA and CSXT (the "2009 Operating Agreement"), which agreement will replace, as of the Second Closing, the 1994 Trackage Rights Agreement, and which will govern operations, maintenance and dispatching of the Second Closing Lines west of milepost 22.4. I have also personally participated on behalf of CSXT in the negotiation of the 4<sup>th</sup> Amendment to the 1985 Trackage Rights Agreement amending the

1985 Trackage Rights Agreement which will, as amended, continue to govern the Grand Junction Branch and the Boston Terminal Running Track. After the Second Closing, operations over the Second Closing Lines east of milepost 22.4 will also continue to be governed by the 1985 Trackage Rights Agreement as amended, albeit under an arrangement where MBTA will replace CSXT as the entity maintaining and dispatching that line segment. Use of the Boston Main Line, from Boston to Worcester, has been shared between CSXT, Amtrak, and MBTA for decades. As reflected in the 1985 and 1994 Trackage Rights Agreements, the parties have developed extensive operating protocols and schedules that have fully accommodated commuter rail, freight rail and Amtrak intercity passenger rail transportation.

As set forth in the 2009 Operating Agreement, the parties have agreed to operate pursuant to three daily “operating windows”: (i) during "A.M. and P.M. Peak Windows" (5:00 a.m. – 9:45 a.m. and 4:00 p.m. – 6:00 p.m.) only one scheduled freight train will operate in one direction; (ii) during "Midday and Late Night Windows" (9:46 a.m. – 3:59 p.m. and 10:01 p.m. – 12 midnight) mixed passenger and freight train usage will occur; and (iii) during the "Midnight Window" (12:01 a.m. – 4:59 a.m.) priority will be given to freight train use. CSXT will be able to meet its common carrier obligations during these windows.

The 2009 Operating Agreement provides that MBTA must allow Amtrak trains to be accommodated under the CSXT retained easements in accordance with the provisions of the existing CSXT-Amtrak Agreement until such time as a subsequently negotiated MBTA-Amtrak agreement is entered into directly between Amtrak and MBTA, and that, in extraordinary circumstances, trains can operate outside their normal operating windows.

For the first six months of 2009, CSXT operated an average of one train per day over the South Coast Lines,<sup>4</sup> one train per week over the Grand Junction Branch, very few trains during the six month period over the Boston Terminal Running Track, about twelve trains per day over the Framingham to Worcester line, and about eight trains per day over the Cove to Newton line. These operations include line haul service, pick-up, delivery and switching. The operating windows that CSXT has preserved will allow CSXT to continue to provide similar service to its shippers after the Railroad Assets are acquired by the Commonwealth.

I can state from my personal involvement in the negotiation of the 2009 Operating Agreement and the 4<sup>th</sup> Amendment to the 1985 Trackage Rights Agreement that the operating agreements were developed through extensive consultation between the parties in order to provide for the continued accommodation of commuter, freight and Amtrak on the shared corridor.

Having participated in the development of the operating agreements, and based on the Commonwealth's assurances and my 28 years of experience in rail operations and operations planning, I am confident that CSXT will be able to fully satisfy its common carrier freight obligations on the Grand Junction Branch, the Boston Terminal Running Track and the Second Closing Lines following the Commonwealth's purchase. Amtrak, the only other current user of the Railroad Assets, will not be adversely affected. The transaction has had significant public exposure since the announcement of the agreements and CSXT's expectation is that the proposed freight operating plan will maintain acceptable levels of service to customers.

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<sup>4</sup> Today, CSXT provides service five days per week, three days per week on the Cotley Jct. to New Bedford line and two days per week on the Cotley Jct. to Fall River line. Each train contains empty and loaded cars, totaling about 15 cars per train. CSXT handles about 1,900 loaded cars per year on the South Coast Lines.



CSXT does not anticipate that the sale of the Railroad Assets to the Commonwealth will have a significant impact on its employees.

After the First Closing, CSXT will no longer maintain or dispatch the First Closing Lines.<sup>5</sup> However, CSXT will not abolish any positions, will not furlough any employees, and will not relocate any positions as a result of the First Closing. The only employee impact that CSXT anticipates from the First Closing is that the sale of the permanent freight easement over the South Coast Lines to Mass Coastal and the grant of the Mass Coastal Trackage Rights will somewhat reduce the overtime opportunities for two train crews who work out of Middleboro.

At the Second Closing, MBTA will assume responsibility for all maintenance and dispatching of the Second Closing Lines then being done by CSXT. As a result, CSXT anticipates that it will abolish the positions of four Dispatchers, four Maintenance of Way workers, seven Signalmen, and one Communications worker. CSXT expects to absorb the employees whose positions are abolished through attrition and other work.

At or before the Second Closing, CSXT also plans to relocate transportation and mechanical operations from Beacon Park to Framingham, Worcester, or other locations in Massachusetts. As a result, CSXT expects to abolish three trainmen and two engineer positions, and to relocate about thirty-seven employees (eleven trainmen, eleven engineers, five carmen, eight machinists, one sheet metal worker, and one electrician.). CSXT does not anticipate furloughing any employees as a result of these changes.

CSXT has offered to negotiate agreements with its unions representing employees potentially affected by the First Closing and the Second Closing, which would provide New

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<sup>5</sup> CSXT does not now dispatch operations over, nor maintain the tracks and materials on, the Bay Colony Land.

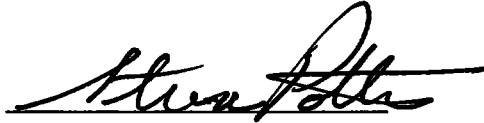
York Dock-type economic protective benefits to employees adversely affected by the sale of the Railroad Assets to the Commonwealth. In the sale of the freight easement for the South Coast Lines, CSXT contemplates that the Board will impose New York Dock conditions, as modified by Wilmington Terminal, should it approve the transaction. In addition, CSXT contemplates that the Board will impose Norfolk & Western conditions on the overhead trackage rights granted to Mass Coastal.

The operating agreements that have resulted from the CSXT and Commonwealth/MBTA negotiations address safety, capacity, dispatch, maintenance, liability, and operating windows in a well-reasoned and thoughtful manner, accommodating the respective needs of all stakeholders in and users of the Railroad Assets. CSXT believes that this transaction is a model of how these types of shared corridor transactions should be handled.

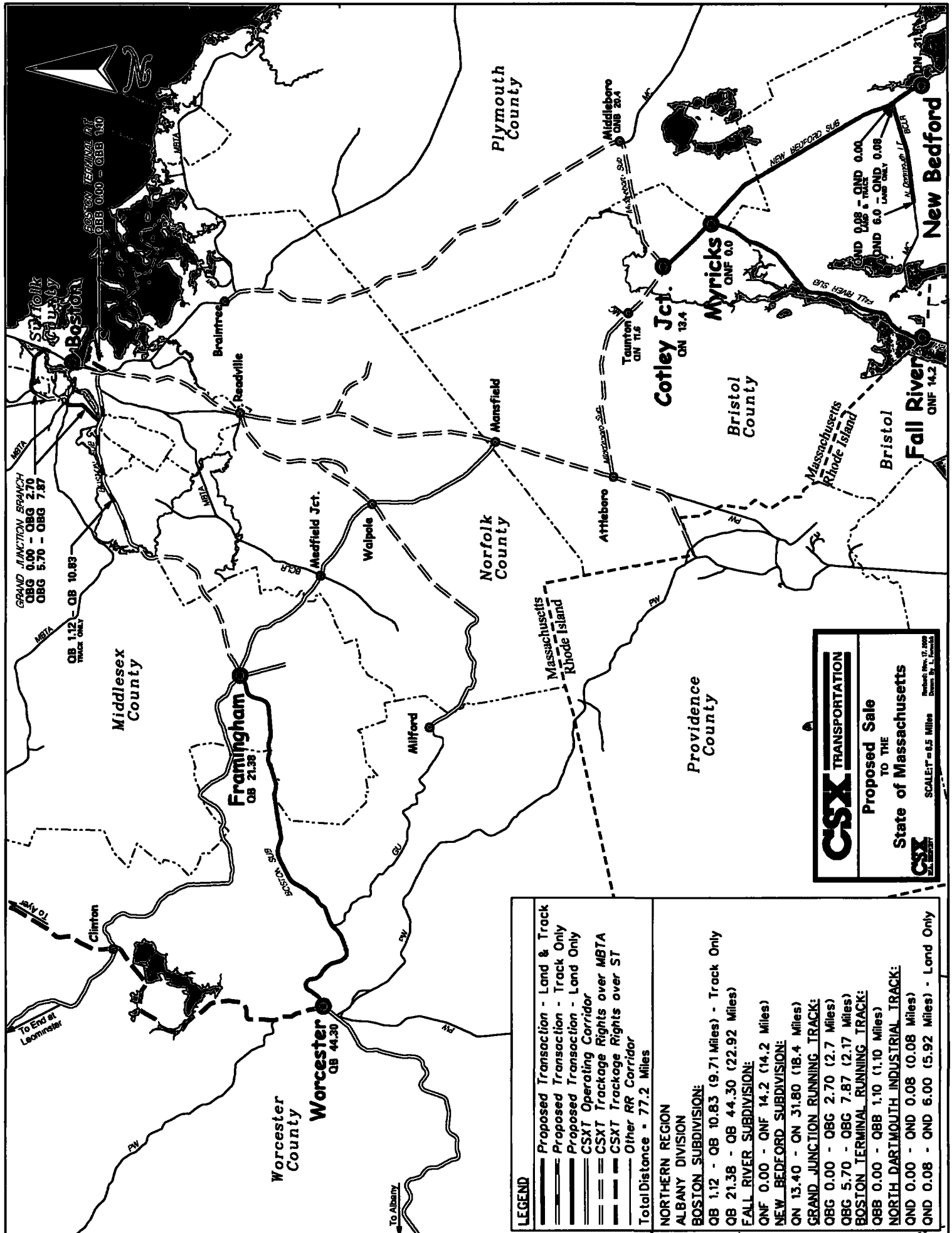
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## VERIFICATION

I, Steven Potter, declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed this 5<sup>th</sup> day of November 2009.

A handwritten signature in black ink, appearing to read "Steven Potter", is written over a horizontal line.

Steven Potter



**EXHIBIT E**

Deed File 2208

MASSACHUSETTS TURNPIKE AUTHORITY

TO

THE NEW YORK CENTRAL RAILROAD  
COMPANY

(DEED OF EASEMENTS)

LAND AT BOSTON  
BROOKLINE  
NEWTONDATED: Dec. 27, 1962  
RECORDED: DEC. 27, 1962

## RECORDINGS:

SUFFOLK Book 7710 Page 182

NORFOLK Book 1042 Page 315

MIDDLESEX Book 10191 Page 30

AT.....MAP.....
DR.....MAP.....
R. R. ....
V8 PERM. MAP NO. 1A- to 11
NO. 72
Cost 2208

 Roll Map C-523

(PLANS IN ROLL IN REAL ESTATE VAULT)

P.M.C-523

B.H.# 2208

47605

4042

DEED OF EASEMENTS

REGISTERED  
COUNTY OF

MASSACHUSETTS TURNPIKE AUTHORITY

Rec'd 1.1.1930 P.M.

THE NEW YORK CENTRAL RAILROAD COMPANY

BOSTON  
BROOKLINE  
NEWTON

LAW OFFICES OF  
MURPHY AND MURPHY  
SIXTY STATE STREET  
BOSTON 9, MASSACHUSETTS

DEED OF EASEMENTS

MASSACHUSETTS TURNPIKE AUTHORITY, a body politic and corporate, created by and acting pursuant to the provisions of Chapter 354 of the Massachusetts Acts of 1952 as amended, and Chapter 384 of the Acts of 1958, for consideration paid, hereby grants to THE NEW YORK CENTRAL RAILROAD COMPANY, a corporation duly organized and existing under the laws of the State of Delaware,

the PERPETUAL EASEMENT (hereinafter referred to as "the EASEMENT") for use exclusively by THE NEW YORK CENTRAL RAILROAD COMPANY, its successors and assigns, lessees, licensees and their respective customers, for railroad and related purposes, and, while so used for any other common carrier purpose, excluding, however, the right to construct a highway for public use.

The EASEMENT is granted in, over and across land in the City of Boston, Suffolk County, the Town of Brookline, Norfolk County and the City of Newton, Middlesex County all as shown on a plan entitled, "Plan of Easements to be conveyed to the New York Central Railroad Company by the Massachusetts Turnpike Authority in Boston, Brookline and Newton, counties of Suffolk, Norfolk, Middlesex as prepared by Massachusetts Turnpike Authority." Scale: as noted. Dated December 27, 1962 to be recorded herewith.

1. The EASEMENT is conveyed subject to easements and licenses for crossings of utility lines, sewers, cables, pipes, tunnels and conduits as are now located in, upon, across, over and beneath the surface of the above described land, reserving to the grantor and hereby granting to the grantee the right to relocate said crossings in furtherance of the construction, operation, or maintenance of the grantor's Boston Extension or the grantee's railroad, or both, and reserving also to the grantor the right to make such encroachment or encroachments as may be necessary for the construction,



operation, or maintenance of the grantor's Boston Extension. Any such relocation or encroachment shall not unreasonably interfere with the use of the EASEMENT and shall be subject to the approval of the Chief Engineer of the grantor and the grantee.

2. If and when the grantee, pursuant to the permission of a governmental agency or agencies, shall abandon a line of railroad or any related railroad facility, located in or upon the above described premises, such action shall constitute an absolute and final abandonment and termination of that portion of the EASEMENT so affected, provided, however, that the abandonment of any related railroad facility pursuant to such permission shall not reduce the adjacent right-of-way EASEMENT for a line of track or tracks to a width less than that prevailing in the vicinity of such abandoned facility. The grantee, upon request of the grantor, will execute and deliver to the grantor, for recording or otherwise, such instrument or instruments confirming such abandonment and termination as the grantor may reasonably require and in the event of such abandonment and termination the grantee may remove any or all of its property therefrom within a reasonable time thereafter.

3. The EASEMENT, through that portion of the above described premises shown on the aforementioned plan as property of THE PRUDENTIAL INSURANCE COMPANY OF AMERICA and the CITY OF BOSTON shall be limited in height to elevation 29'6" above Boston City Base, and the EASEMENT through said Insurance Company and City of Boston areas shall include rights and easements for ventilating shafts or ducts, motors and fans, emergency stairway, and to attach, repair, maintain and renew ducts, pipes, conduits, cables and other appliances and facilities and their supports, equivalent to those reserved by the BOSTON AND ALBANY RAILROAD COMPANY in its deed to THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,, dated July 25, 1956, and recorded in Suffolk Registry District as Document No. 227306, as modified by the

provisions of deeds of said Insurance Company to MASSACHUSETTS TURN-PIKE AUTHORITY (1) dated July 25, 1962 recorded with said Suffolk Registry District as Document No. 255417 (2) dated December 21, 1962, recorded with said Registry District herewith.

4. The grantor will, from time to time, grant, free of charge to the grantee, and its lessees, the right to attach, repair, maintain and renew, while the EASEMENT exists, utility lines, cables, pipes, conduits, signals, signal supports and other equipment used for railroad purposes to bridges, walls and other structures on, over or adjacent to the EASEMENT; provided, however, that such attaching, repairing, maintaining and renewal shall not unreasonably interfere with the construction, operation and maintenance of the Boston Extension and the use of such bridges, walls and other structures for the purposes for which they were built. Any entry upon, over or under roadways or adjacent shoulders or operating facilities of the Boston Extension for such purposes shall be subject, except in case of emergency, to the ~~prior~~ written approval of the Chief Engineer of the grantor, which approval shall not be unreasonably withheld.

5. The grantor, will, from time to time, grant, free of charge to the grantee, and its lessees, upon request,

(a) an easement or easements under the Boston Extension for pipe tunnels, and utility and service lines and pipes, and their maintenance, repair and renewal, needed for servicing the railroad and facilities located upon the EASEMENT.

(b) an easement or easements in property of the grantor for the construction, maintenance, repair and renewal of sewer, water and other utility and service lines, needed to connect

such lines located upon the EASEMENT with private or public lines not owned by the grantee.

- (c) an easement or easements in land owned by the grantor located outside of the main line, as presently located or relocated, of the grantee for the operation, construction, maintenance, repair and renewal of side, spur and industrial tracks to serve railroad shippers and receivers of freight now or hereafter located outside of said main line.
- (d) an easement or easements in land of the grantor adjacent to the easement herein conveyed for the construction, maintenance, repair and removal of communication, power or signal lines and their appurtenances, used or to be used for railroad purposes.

Such easements and the maintenance, repair and renewal of the facilities installed therein shall not unreasonably interfere with the Boston Extension or its operation, and no entry upon, over or under roadways or adjacent shoulders or operating facilities of the Boston Extension for such purposes shall be made without the prior written approval of the Chief Engineer of the grantor, which approval shall not be unreasonably withheld. All requests by the grantee, and its lessees, for such easements shall be in writing and shall contain a description of the location of the easement requested.

6. Except as otherwise provided herein, no part of the EASEMENT herein granted or any interest therein, or right to use or participate in the use of the same, may be sold without the prior written consent of the grantor except to a railroad engaged in interstate commerce, provided, however, that the EASEMENT and such right may be subjected

by the grantee to the lien of the Indenture of Trust and Mortgage dated April 1, 1935 made by Boston and Albany Railroad Company and assumed by the grantee, under which New England Merchants National Bank of Boston is now the Trustee, as heretofore and hereafter supplemented and amended, and the EASEMENT and such right may be sold on any foreclosure of said Indenture of Trust.

7. Upon the relocation of the grantee's tracks within the area of the EASEMENT and the commencement of the use of the same by the grantee, the grantor will, at its expense, (including the expense of required protective services) repair, maintain, replace and renew all drainage installations, culverts, embankments, slopes, ditches, retaining walls, fences and bridges, on, over or under or required in connection with the use of the EASEMENT by the grantee, and the grantee will assume all other costs of such maintenance, replacement, repair and renewal necessary for such railroad operation as it may undertake within the EASEMENT area. The grantor, its agents or employees, may enter upon the EASEMENT area from time to time to perform such work, but except in case of emergency, such entry shall be made only at reasonable times and upon prior written approval of the Chief Engineer of the railroad company then operating the railroad on the EASEMENT, or his designee, which approval shall not be unreasonably withheld. The grantor shall further authorize the grantee from time to time (1) in case of emergency, or (2) otherwise upon thirty (30) days written notice to the grantor by such Chief Engineer that the work described in the notice is necessary for the continued safe operation of the railroad unless within said thirty (30) days the grantor, its agents or employees, shall have commenced such work and thereafter shall complete the same with due diligence, to perform such work as is necessary for the safe operation of the grantee's railroad or cause the same to be performed, at the expense of the grantor. Only the direct costs of said grantee in performing such emergency work shall be so charged to the grantor.

8. If the same be pertinent, this EASEMENT is also granted subject to the right of the Metropolitan Transit Authority to construct, use and maintain, overhead structures across the right of way as provided in Article 10 of Agreement between the New York Central Railroad Company, the Boston and Albany Railroad Company and the Metropolitan Transit Authority dated December 23, 1957.

And for the aforesaid consideration the MASSACHUSETTS TURNPIKE AUTHORITY also grants to said NEW YORK CENTRAL RAILROAD COMPANY, its successors, assigns, lessees, licensees and their respective customers, in common with the grantor and all others entitled thereto, the perpetual easement to pass and repass on foot and by vehicles of all description, over and across the areas shown and marked on the aforementioned plan as "ACCESS EASEMENT".

The EASEMENT crosses: (a) the parcel of land owned by the City of Boston on the southerly side of Boylston Street in said Boston which was conveyed by The Prudential Insurance Company of America to the City of Boston for municipal auditorium purposes by deed dated December 23, 1958, recorded with Suffolk Deeds, Book 7386, Page 140; (b) the parcel of land owned by the City of Boston on the southerly side of said Boylston Street which was conveyed by said Insurance Company to the City of Boston for highway purposes by deed dated December 23, 1958, recorded with Suffolk Deeds, Book 7386, Page 147; (c) the parcel of land owned by said Insurance Company lying between Boylston Street and Huntington Avenue in said Boston described in Certificate of Title No. 64667 issued by said Registry District to said Insurance Company; and (d) another parcel of land owned by said Insurance Company on the southerly side of said Boylston Street, being the fourth parcel of land described in the Grant of Easement dated July 25, 1962, referred to below, a portion of this parcel being the second parcel of land described in said Certificate of Title No. 64667. The EASEMENT, where it crosses the four parcels referred to above, is delineated on Plan of Land in Boston, Massachusetts, showing easements to

be granted to the Massachusetts Turnpike Authority and The New York Central Railroad Company dated December 10, 1962, by New England Survey Service, Inc., Civil Engineers and Surveyors, filed in the Land Registration Office and recorded herewith. Massachusetts Turnpike Authority, in granting the EASEMENT across said four parcels of land owned by the City of Boston and Prudential Insurance Company of America, is acting in accordance with the provisions of two Grants of Easements to the Authority from Prudential Insurance Company of America, one dated July 25, 1962, recorded with Suffolk Deeds, Book 7667, Page 240, filed in the Suffolk Registry District as Document No. 255417, and noted on Certificates of Title Nos. 64644, 64645 and 64667, the other dated December 21, 1962 to be filed and registered herewith. The EASEMENT is hereby granted subject to the provisions of said two Grants of Easements so far as applicable and nothing herein contained shall be construed to modify the rights and obligations of the City of Boston and The Prudential Insurance Company of America as the same exist prior to the delivery hereof.

In addition to said land of The Prudential Insurance Company of America described in said Certificate of Title No. 64667, the EASEMENT also crosses portions of other parcels of registered land in the City of Boston now owned by the Massachusetts Turnpike Authority. Said other parcels of registered land affected by the EASEMENT are respectively described in the following Certificates of Title recorded in the Suffolk Registry District:

<u>CERTIFICATE</u>	<u>BOOK</u>	<u>PAGE</u>	<u>CASE NO.</u>
68578	338	178	20418 <sup>A</sup>
68793	339	193	21781 <sup>E</sup>
52959	260	159	21781 <sup>B</sup>
67143	331	143	21781 <sup>C</sup>
63100	311	100	27262 <sup>A</sup>
50570	248	170	21167 <sup>A</sup>

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<u>CERTIFICATE</u>	<u>BOOK</u>	<u>PAGE</u>	<u>CASE NO.</u>
69280	342	80	29760
49097	241	97	1/067 <sup>A</sup>
42636	209	36	18523 <sup>A</sup>
55608	274	8	11261 <sup>A</sup>
33106	161	106	1214 <sup>B</sup>
52724	259	124	11270 <sup>A</sup>

This instrument shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns.

IN WITNESS WHEREOF, the said MASSACHUSETTS TURNPIKE AUTHORITY has caused its corporate seal to be hereto affixed and these presents to be signed in its name and behalf by a majority of its members hereunto duly authorized this twenty-seventh day of December, 1962.



MASSACHUSETTS TURNPIKE AUTHORITY

By William F. Callahan  
Joseph H. Elcock, Jr.  
A. M. D. [Signature]

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

December 27, 1962  
 Boston, Mass.

Then personally appeared William F. Callahan and Joseph H. Elcock, Jr., and acknowledged the foregoing instrument to be the free act and deed of the Massachusetts Turnpike Authority, before me

My commission expires

NOV 30 1967


John L. Murphy Jr.  
 Notary Public  
 JOHN L. MURPHY JR.  
 60 STATE STREET  
 BOSTON, MASSACHUSETTS



At a meeting of the Massachusetts Turnpike Authority, duly called and held at Boston, Massachusetts on the 27th day of December, 1962, a majority of the members being present and acting throughout, the foregoing Deed of Easements to the New York Central Railroad Company having been presented, it was, inter alia

VOTED: that a majority of the members of the Massachusetts Turnpike Authority be and they are hereby authorized to execute, seal, acknowledge and deliver in the name and on behalf of the Massachusetts Turnpike Authority, the Deed of Easements to the New York Central Railroad Company which has just been presented.

ATTEST

  
A. J. Schnackenberg  
Secretary-Treasurer



Recorded Dec. 27, 1962 at 1h.30m. P.M.

DEDHAM, MASS. Dec. 27 1962  
at 1 o'clock and 30 Minutes P.M.  
Received and Entered with Norfolk deeds  
Vol. 4042 Page 315 & Vote  
Attest:

  
L. Thomas Shine  
Register of Deeds



**EXHIBIT F**

BK 12370 PG 158

NO 25-32

11/24/73

KNOW ALL MEN BY THESE PRESENTS:

We, GEORGE P. BAKER, RICHARD C. BOND, and JERVIS LANGDON, JR., Trustees of the property of the Penn Central Transportation Company, in Proceedings for the Reorganization of a Railroad entitled: "In the Matter of Penn Central Transportation Company, Debtor", No. 78-347, in the United States District Court for the Eastern District of Pennsylvania (Grantors), acting herein pursuant to the authority vested in us by Orders Nos. 20, 867 and 1065 in said proceedings, for the consideration of Nineteen Million Five Hundred Thousand Dollars (\$19,500,000), the receipt of which is hereby acknowledged, GRANT to the MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, a body politic and corporate and a political sub-division of the COMMONWEALTH OF MASSACHUSETTS, established under the provisions of Chapter 161A of the General Laws, inserted by Section 16 of Chapter 36J of the Acts of 1962 (Grantee), free of all liens and encumbrances, subject only to existing leases, licenses and agreements recorded prior to February 3, 1972, all of our right, title and interest in and to certain property of the Grantors, including interests in land, buildings, track bridges, excluding those bridges within the purview of Chapter 634 of the Massachusetts Acts of 1971, all track and related track structures and the signal system and related facilities, consisting of:

- (A) The properties of the former Boston and Providence Railroad Company located in the Commonwealth of Massachusetts;
- (B) Certain branch lines of railroad of the former New York, New Haven and Hartford Railroad Company; a portion of the abandoned former New York, New Haven and Hartford Railroad Company branch line from Easton to Whittenton Junction; the station facilities and land at Bus. 128 Station in the Towns of Durham and its environs;
- (C) Certain parcels of land originally acquired in the name of the former New York, New Haven and Hartford Railroad Company;

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MASSACHUSETTS BAY TRANSPORTATION AUTHORITY 12370 PG 158

63471

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(D) The former Boston & Albany main line between Riverside and Framingham, Massachusetts, together with a portion of the Newton Lower Falls Branch Line beginning at Station 519 + 20 and extending southwesterly 2,040 feet to Route 128.

All of the aforesaid property hereby granted is described in Schedule "A" attached hereto and made a part hereof and is shown in red outline on a series of Valuation Plans made a part hereto, entitled:

"Right Of Way And Track Map (Boston And Providence R.R. Corp.) (Old Colony R.R. Co.) (The New York New Haven And Hartford R.R. Co.) Operated by The New York New Haven And Hartford R.R. Co., Scale: 1" = 100 Ft. Date June 30, 1915 Office Of Valuation Engineer, Boston, Mass." and numbered as follows:

V 3.10 through V 3.17	Sheets 4 through 41-1/2, Sheet 31 excluded.
V 3.18 (3.18)1.1(1)	
V 3.19 through V 3.20	Sheets 1 through 6
V 3.21	Sheets 1 through 5
V 3.22	Sheets 1 through 5
V 4.11 through V 4.17	Sheets 11.1, 11.2 through 29
V 4.26	Sheets 1 through 4
V 4.27 through V 4.29	Sheets 1 through 15 including 1A and 1B
V 5.15 through V 5.19	Sheets 12 through 37
V 5.31 through V 5.32	Sheets 1 through 11
V 5.43	Sheets 1 and 2
V 5.44 through V 5.45	Sheets 8 through 18
V 7.22	Sheets 1 and 2

and on a certain set of Valuation Plans entitled:

"Right Of Way And Track Map Boston And Albany Railroad Operated By The New York Central Railroad Co. Scale: 1" = 100 Ft. Date June 30, 1915 Office Of Valuation Engineer Boston, Mass." and numbered 1 through 22.

Said Plans, showing the property granted within each County, are recorded herewith in the Registry of Deeds of the appropriate County.

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Reserving from this grant, however, to the Grantors, their successors and assigns, the right and easement, hereinafter referred to as the transportation easement, to use such portions of the premises herein granted, together with the existing buildings, structures, railroad track, facilities and appurtenances thereon as may be necessary, as shall be mutually agreed upon between the parties, for transportation purposes, in common with Grantee's use thereof. Freight service conducted on the transportation easement reserved on the portion of the former Boston and Providence Railroad Company main line between Valuation Station 2267 + 00 in Boston and Valuation Station 1810 + 00 in Readville shall be limited to the use of a single track from which Grantors will be able to continue service solely to existing receivers of freight on said portion of said line. Grantors shall have the right to use the existing track system for purposes of required crossover for such freight service. Any change in the existing crossover system made by the Grantee shall be at the expense of the Grantee as provided hereinafter. To the extent that use of the easement reserved herein may be reduced either by discontinuance of passenger service or by an abandonment of freight service, then the easement reserved may be limited to the minimum required trackage as may be mutually agreed upon.

The transportation easement reserved on the remaining lines of former Boston and Providence Railroad Company and on the other branch line rights of way shall be the minimum adequate to enable Grantors to carry out their obligations to shippers and receivers on the said main lines and branch line rights of way on a track or tracks to be mutually agreed upon between the parties. To the extent that passenger services on said main lines or branch line rights of way are presently being conducted, the transportation easement shall also be the minimum adequate to operate such service so long as it continues.

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The transportation easement reserved on the main line of the former Boston and Providence Railroad Company includes the right to operate passenger trains for the account of "Amtrak," so-called, and Grantors are obligated under their agreement with "Amtrak" to preserve, until July 1, 1973, the use of said main lines for the purposes of providing Inter-City Passenger Service. The transportation easement so far as it relates to this "Amtrak" service shall terminate on July 1, 1973 unless (a) the "Amtrak" agreement is extended or (b) Grantors are required by law or an order of a regulatory agency to continue Inter-City Passenger Service. In the event of such continuance of service, the transportation easement shall continue subject to terms and conditions to be agreed upon by the parties or their successors. The transportation easement reserved shall terminate as to any portion or portions thereof when and if Grantors obtain from any regulatory agency having jurisdiction a certificate permitting of abandonment of operations over any such portion or portions.

The transportation easement reserved herein does not include the right to participate in the proceeds from any development of the air rights over said ~~cor~~ .nt and said easement is intended to permit Grantors to operate thereon for transportation purposes.

Grantors further reserve to themselves, their successors and assigns, the right and easement to use, maintain, replace, renew, or install poles, pipes, wires and appurtenances within the scope of the Grantors' easement. X

Grantors and Grantee agree that on certain of the rights of way granted, joint use of those rights of way may be feasible and desirable. Grantors' use of said rights of way may be limited by time or usage to enable Grantee to enjoy use of said rights of way for rapid transit or other purposes. In the event of such

joint use, separate operating agreements shall be negotiated between Grantee and Grantors. In the event that Grantee desires exclusive use of any portion or portions of the properties subject to the easement reserved herein, free of the said easement, Grantors, at Grantee's sole cost and expense, shall modify their operations in accordance with plans and contracts approved by the Chief Engineer of Grantors at such locations as may be mutually agreed upon between the parties. Said approval of the Chief Engineer shall not be unreasonably withheld.

Grantee agrees that any air rights development will not interfere with Grantors' free and uninterrupted use of the transportation easement reserved and agrees to submit plans of any such development over said easement for approval by Grantors' Chief Engineer to the extent said development affects such easement, which approval shall not be unreasonably withheld.

Grantors agree to bear the cost of necessary maintenance, repair and alteration of all buildings, structures, tracks, facilities and appurtenances, used solely by Grantors. If Grantors and Grantee use any of the premises jointly then Grantee shall assume the obligations of this covenant to the extent of such joint use, provided, however, that neither party shall be obligated to pay more than the amount which would have been required had there been a separate rather than a joint use. Grantors and Grantee agree that the maintenance, repair and alteration covenant assumed herein may require Grantors to provide, from time to time, material, which in accordance with sound accounting principles is chargeable to capital account. With respect to such material provided by Grantors, Grantors shall retain the right to remove it upon the abandonment of the transportation easement reserved, provided that the usefulness of the premises is not impaired. Without limiting the generality of the foregoing, items chargeable to capital account shall include heavier rail than that on the premises on the closing date, welded rail and new signal

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systems or their appurtenances.

Grantors agree that at such time or times as they obtain a certificate of abandonment of the transportation easement, or any portion or portions thereof, or if they in fact cease to use the said easement, then the said easement shall to the same extent terminate and Grantors shall execute upon the request of Grantee an appropriate release of said easement.

Said premises are granted subject to conditions of title and to leases, licenses and agreements of the Grantors applicable to the granted premises in effect and recorded prior to February 3, 1972; and for consideration of the aforesaid, the Grantors, insofar as they lawfully may, do hereby assign to Grantee all of their rights and privileges applicable to the granted premises, except that the existing agreements between Grantors and Massachusetts Bay Transportation Authority and Grantor and "Antrak" or any extension thereof are not included herein, and it is further agreed that in lieu of any real estate tax apportionment with regard to the property hereunder, the income from said property shall be retained by Grantor for the calendar year 1972 and applied to the payment of Massachusetts real estate taxes as ordered by the Reorganization Court.

All of the terms and provisions of this grant shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns forever.

In order to facilitate the recording of this deed it has been executed in several counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

The Massachusetts deed excise tax stamps required in connection with the grant hereby made have been affixed to the

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counterpart hereof to be recorded with Suffolk County Registry of Deeds.

IN WITNESS WHEREOF, we, George P. Baker, Richard C. Bond and Jervis Langdon, Jr., Trustees of the Property of Penn Central Transportation Company, Debtor, have hereunto set our hands and seals this 17th day of January 1973.

SIGNED, SEALD and DELIVERED  
in the presence of:

*David H. McGuffey*  
*Richard C. Bond*

*George P. Baker*  
George P. Baker, Trustee

*Richard C. Bond*  
Richard C. Bond, Trustee

*Jervis Langdon, Jr.*  
Jervis Langdon, Jr., Trustee

## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

Dorset, January 17 1973

Then personally appeared the above-named George P. Baker and acknowledged the foregoing instrument to be his free act and deed, before me.

*Richard J. Bennett*  
Richard J. Bennett  
Notary Public  
My Commission Expires  
November 26, 1976

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF PHILADELPHIA )

as

Philadelphia, Pa. January 22, 1973

Then personally appeared the above-named Richard C. Bond and Jervis Langdon, Jr. and acknowledged the foregoing instrument to be their free act and deed, before me.

*William J. O'Neill*  
Notary Public  
WILLIAM J. O'NEILL  
Notary Public, Philadelphia, Pa.  
My Commission Expires June 28, 1977





SCHEDULE A

(A) The property comprising the main line right of way of the former Boston and Providence Railroad Company, beginning in Boston and extending in a generally southwesterly direction through Roxbury, Jamaica Plain, Forest Hills, Mount Hope, Clarendon Hills, Hazelwood, Readville, in Suffolk County, and continuing thence in a southwesterly direction through Dedham, Canton, Westwood, Sharon, Sharon Heights, Foxboro, East Foxboro, in Norfolk County, and continuing thence in a southwesterly direction through Mansfield, West Mansfield and Attleboro at the boundary line between the Commonwealth of Massachusetts and the State of Rhode Island in Bristol County.

The former Boston and Providence Railroad Company East Junction Branch Line from East Junction in the City of Attleboro to the boundary line between the Commonwealth of Massachusetts and the State of Rhode Island in the City of Seekonk, all located in Bristol County.

The former Boston and Providence Railroad Company Dedham Branch Line, beginning in Boston, Suffolk County, and extending to Dedham, Norfolk County.

The former Boston and Providence Railroad Company Branch Line between Forest Hills and West Roxbury, all located in Suffolk County.

The former Boston and Providence Railroad Company Branch Line from Canton to Stoughton, all in the County of Norfolk.

The former Boston and Providence Railroad Company Branch Line from West Roxbury in Suffolk County to Dedham in Norfolk County.

(B) The former New York, New Haven and Hartford Railroad Company Branch Line, beginning at Stoughton, Norfolk County, continuing through Easton to Raynham in Bristol County, together with a portion of the former New York, New Haven and Hartford Railroad Company, all in Bristol County.

The former New York, New Haven and Hartford Railroad Company Branch Line, beginning in West Roxbury, Suffolk County, to Needham, Norfolk County.

The former New York, New Haven and Hartford Railroad Company Branch Line from Cook Street in Newton, Middlesex County, through Needham, Dedham, Dover, Medfield to Millis in Norfolk County.

The former New York, New Haven and Hartford Railroad Company Branch Line between Braintree, Norfolk County, to Plymouth, Plymouth County, passing through Weymouth, Abington, Whitman, Hanson, Halifax, Plympton and Kingston.

The former New York, New Haven and Hartford Railroad Company Branch Line between Readville and Franklin, beginning in Ranton, Suffolk County, running through Dedham, Westwood, Norwood, Walpole, Norfolk to Franklin, Norfolk County.

The former New York, New Haven and Hartford Railroad Company Branch Line between Braintree and Campello, beginning in Braintree, running through Randolph, Holbrook and Avon, Norfolk County, continuing thence to Brockton, Plymouth County.

(C) Certain parcels of land originally acquired in the name of the former New York, New Haven and Hartford Railroad Company located within or immediately adjacent to the former Boston and Providence Railroad Company main line between Valuation Stations 2267+00 and 305+13, included within the red outline on the plans made a part of and filed with the deed granting the properties herein, as follows:

<u>Location</u>	<u>County</u>	<u>Val. Map</u>	<u>Valuation CL Sta.</u>	<u>Area</u>
Roston	Suffolk	11(317)41.1(41) (41.1 41 1/2.1)	1/2.1 2215+0	100 sq. ft.
"	"	"	2216+50	2,000 " "
Hyde Park	"	11(315)34.1(34)	1033+50	12,750 " "
"	"	11(315)33.1(33)	1800+0	3,750 " "
Sharon	Norfolk	11(3.13)21.1(22)	1292+0	4,500 " "
"	"	11(3.13)19.1A(19-20)	1234+0	4,350 " "
"	"	"	1223+0	5,200 " "
"	"	11(3.13)19.1(19)	1210+0	40,850 " "
F. Foxboro	"	11(3.13)17.1(17)	1070+0 to 1097+39	88,285 " "
Foxboro	"	11(3.13)16.1(16)	1036+10 to 1070+31	95,640 " "
"	"	"	1030+0	22,116 " "
Attleboro	Bristol	11(3.12)9.1(9)	660+0	21,780 " "
"	"	11(3.12)7.1(7)	570+0	31,800 " "

<u>Location</u>	<u>County</u>	<u>Val. map</u>	<u>Valuation Cl. Sta.</u>	<u>Area</u>
Seekonk	Bristol	11(3.10) A (4)	334+34.68 (parcel)	4,950 sq. ft.
Perrine Sta.	"	11(3.10) B (5)	380+0	7,500 " "
Attleboro	"	10(3.11-12) A (8)	612+0	10,260 " "
"	"	10(3.11-12) A (8)	625+0	4,200 " "
Foxboro	Norfolk	10(3.13) C (18)	1140+0	64,750 " "
East. Jet.	Bristol	11(3.21-11) S.1(5)	490+0 (par. 9)	23,700 " "

(D) The former Boston and Albany main line between Riverside and Framingham, beginning in Auburndale, Middlesex County, running through Wollensley Farms, Wollensley Hills, Wollensley, Norfolk County, and continuing through Natick to Framingham in Middlesex County, together with a portion of the Newton Lower Falls Branch Line, beginning at Station 519 + 20 and extending southwesterly 2,040 feet to Route 128, consisting of approximately 163,500 square feet.

(F) All of the lands of the Grantor situated in Walpole and Canton are more specifically described in Certificates of Title Nos. 9306 and 90756, respectively, registered with the Registry District of Norfolk County in Book 47, Page 188 and Book 454, Page 156, respectively.

All of the aforesaid property granted within each County is shown in red outline on a series of Valuation Plans recorded with the deed granting the aforesaid property in the Registry of Deeds in the appropriate County.

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, a body politic and corporate and a political sub-division of the COMMONWEALTH OF MASSACHUSETTS, established under the provisions of Chapter 161A of The General Laws, inserted by Section 18 of Chapter 563 of The Acts of 1964, for consideration paid, grants to the UNITED STATES OF AMERICA, acting by and through its DEPARTMENT OF TRANSPORTATION and the URBAN MASS TRANSPORTATION ADMINISTRATION thereof pursuant to Section 3(b) of The Urban Mass Transportation Act of 1964, as amended (P.L. 88-365, 78 Stat. 392, 49 U.S.C., Sec 1602(b) as amended by P.L. 91-453, 84 Stat. 936, 964), and pursuant to Reorganization Plan No. 2 of 1968 (33 Fed. Reg. 6965, 82 Stat. 1369), as delegated by the Secretary of Transportation (49 C.F.R., Subtitle A, Sec. 1.50 as amended May 9, 1972, 37 Fed. Reg. 9321, 9322), with MORTGAGE COVENANTS to secure the payment of EIGHTEEN MILLION FIVE HUNDRED THOUSAND AND NO/100 (\$19,500,000.00) DOLLARS in Ten (10) years with interest thereon as provided in a Note and Loan Agreement of even date herewith, all of its right, title and interest in and to certain property of the Grantor including land, buildings, track bridges and all track and related track structure and the signal system and related facilities, consisting of:

- (A) The properties of the former Boston and Providence Railroad Company located in the Commonwealth of Massachusetts;
- (B) Certain branch lines of railroad of the former New York, New Haven and Hartford Railroad Company; a portion of the abandoned former New York, New Haven and Hartford Railroad Company branch line from Easton to Whittenton Junction; the station facilities and land at Route 128 Station in the Towns of Dedham and Westwood;
- (C) Certain parcels of land originally acquired in the name of the former New York, New Haven and Hartford Railroad Company;

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(D) The former Boston & Albany main line between Riverside and Frammingham, Massachusetts, together with a portion of the Newton Lower Falls Branch Line beginning at Station 519 + 20 and extending southwesterly 2,040 feet to Route 128.

All of the aforesaid property hereby granted is described in Schedule "A" attached hereto and made a part hereof and is shown in red outline on a series of Valuation Plans, entitled:

"Right Of Way And Track Map (Boston And Providence R.R. Corp.) (Old Colony R.R. Co.) (The New York New Haven And Hartford R.R. Co.) Operated by The New York New Haven And Hartford R. R. Co., Scale: 1" = 100 Ft. Date June 10, 1915 Office of Valuation Engineer, Boston, Mass." and numbered as follows:

V 3.10 through V 3.17	Sheets 4 through 41-1/2, Sheet 31 excluded.
V 3.18 (3.18)1.1(1)	
V 3.21 through V 3.29	Sheets 1 through 5
V 3.21	Sheet 1 through 5
V 3.22	Sheets 1 through 4
V 4.11 through V 4.17	Sheets 11.1, 11.2 through 29
V 4.26	Sheets 1 through 4
V 4.27 through V 4.29	Sheets 1 through 15 including 1A and 1B
V 5.15 through V 5.19	Sheets 12 through 37
V 5.31 through V 5.32	Sheets 1 through 11
V 5.43	Sheets 1 and 2
V 5.44 through V 5.45	Sheets 8 through 18
V 7.22	Sheets 1 and 2

and on a certain set of Valuation Plans entitled:

"Right Of Way And Track Map Boston And Albany Railroad Operated By The New York Central Railroad Company As Lessee Main Line Scale: 1" = 100' June 10, 1915 Office of Valuation Engineer Boston, Mass." and numbered V 1 Sheets 11 through 22.

Said Plans, showing the property granted within each County, are recorded here in the Office of Deeds of the appropriate County.

The above-described premises are conveyed subject to and with the benefit of easements, reservations, agreements, conditions of title and leases, licenses and agreements applicable to the granted premises in effect and recorded prior to February 3, 1972.

Meaning and intending to convey all and the same premises conveyed to this Grantor by deed of George P. Baker, Richard C. Bond and Jervis Langdon, Jr., Trustees of the property of the Penn Central Transportation Company to be recorded herewith.

This mortgage is upon the statutory condition, for any breach of which the mortgagee shall have the statutory power of sale.

IN WITNESS WHEREOF, the said MASSACHUSETTS BAY TRANSPORTATION AUTHORITY has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by Henry Sears Lodge its Chairman this 26th day of January, 1973.

Signed and sealed  
in the presence of:

MASSACHUSETTS BAY TRANSPORTATION  
AUTHORITY

By: Henry Sears Lodge Chairman

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK:SS

January 26, 1973

Then personally appeared the above-named Henry Sears Lodge and acknowledged the foregoing instrument to be the free act and deed of the corporation, before me

Therese L. Sullivan  
Notary Public

My commission expires: \_\_\_\_\_

THERESA L. SULLIVAN, Notary Public  
My Commission Expires November 21, 1975

SCHEDULE A

(A) The property comprising the main line right of way of the former Boston and Providence Railroad Company, beginning in Boston and extending in a generally southwesterly direction through Foxbury, Jamaica Plain, Forest Hills, Mount Hope, Clarendon Hills, Hazelwood, Readville, in Suffolk County, and continuing thence in a southwesterly direction through Dedham, Canton, Westwood, Sharon, Sharon Heights, Foxboro, East Foxboro, in Norfolk County, and continuing thence in a southwesterly direction through Mansfield, West Mansfield and Attleboro at the boundary line between the Commonwealth of Massachusetts and the State of Rhode Island in Bristol County.

The former Boston and Providence Railroad Company East Junction Branch Line from East Junction in the City of Attleboro to the boundary line between the Commonwealth of Massachusetts and the State of Rhode Island in the City of Seekonk, all located in Bristol County.

The former Boston and Providence Railroad Company Dedham Branch Line, beginning in Boston, Suffolk County, and extending to Dedham, Norfolk County.

The former Boston and Providence Railroad Company Branch Line between Forest Hills and West Roxbury, all located in Suffolk County.

The former Boston and Providence Railroad Company Branch Line from Canton to Stoughton, all in the County of Norfolk.

The former Boston and Providence Railroad Company Branch Line from West Roxbury in Suffolk County to Dedham in Norfolk County.

(B) The former New York, New Haven and Hartford Railroad Company Branch Line, beginning at Stoughton, Norfolk County, continuing through Easton to Raynham in Bristol County, together with a portion of the former New York, New Haven and Hartford Railroad Company abandoned branch line between Easton and Whittenton Junction, Taunton, all in Bristol County.

The former New York, New Haven and Hartford Railroad Company Branch Line, beginning in West Roxbury, Suffolk County, to Needham, Norfolk County.

The former New York, New Haven and Hartford Railroad Company Branch Line from Cook Street in Newton, Middlesex County, through Needham, Dedham, Dover, Medfield to Millis in Norfolk County.

The former New York, New Haven and Hartford Railroad Company Branch Line between Braintree, Norfolk County, to Plymouth, Plymouth County, passing through Weymouth, Abington, Whitman, Hanson, Halifax, Plympton and Kingston.

The former New York, New Haven and Hartford Railroad Company Branch Line between Readville and Franklin, beginning in Boston, Suffolk County, running through Dedham, Westwood, Norwood, Walpole, Norfolk to Franklin, Norfolk County.

The former New York, New Haven and Hartford Railroad Company Branch Line between Braintree and Campello, beginning in Braintree, running through Randolph, Holbrook and Avon, Norfolk County, continuing thence to Brockton, Plymouth County.

(C) Certain parcels of land originally acquired in the name of the former New York, New Haven and Hartford Railroad Company located within or immediately adjacent to the former Boston and Providence Railroad Company main line between Valuation Stations 2267 + 00 and 395 + 13, included within the red outline on the plans made a part of and filed with the deed granting the properties herein, as follows:

<u>Location</u>	<u>County</u>	<u>Val. map</u>	<u>Valuation CL Sta.</u>	<u>Area</u>
Boston	Suffolk	11(317)41.1 41 1/2.1 (41.1 41 1/2.1)	2215+0	100 sq. ft.
"	"	"	2216+50	2,000 "
Hyde Park	"	11(315)34.1(34)	1833+50	12,750 "
"	"	11(315)33.1(33)	1800+0	3,750 "
Sharon	Norfolk	11(3.13)21.1(21)	1292+0	4,500 "
"	"	11(3.13)19.1A(19-20)	1234+0	4,350 "
"	"	"	1223+0	5,200 "
"	"	11(3.13)19.1(19)	1210+0	40,850 "
E. Foxboro	"	11(3.13)17.1(17)	1070+0 to 1097+39	88,285 "
Foxboro	"	11(3.13)16.1(16)	1036+10 to 1070+31	95,640 "
"	"	"	1030+0	22,110 "
Attleboro	Bristol	11(3.12)9.1(9)	660+0	21,780 "
"	"	11(3.11)7.1(7)	570+0	37,060 "



<u>Location</u>	<u>County</u>	<u>Val. map</u>	<u>Valuation CL Sta.</u>	<u>Area</u>
Seekonk	Bristol	11(3.10) A (4)	334+34.68 (parcel)	414,950 sq. ft.
Perrina Sta.	"	11(3.10) B (5)	380+0	7,500 " "
Attleboro	"	10(3.11-12) A (8)	612+0	10,260 " "
"	"	10(3.11-12) A (2)	625+0	4,200 " "
Foxboro	Norfolk	10(3.13) C (18)	1140+0	64,750 " "
East. Jct.	Bristol	11(3.21-11) S.1 (5)	490+0 (par. 9)	23,780 " "

(D) The former Boston and Albany main line between Riverside and Framingham, beginning in Auburndale, Middlesex County, running through Wellesley Farms, Wellesley Hills, Wellesley, Norfolk County, and continuing through Natick to Framingham in Middlesex County, together with a portion of the Newton Lower Falls Branch Line, beginning at Station 519 + 20 and extending southwesterly 2,040 feet to Route 128, consisting of approximately 163,500 square feet.

(E) All of the lands of the Grantor situated in Walpole and Canton as more specifically described in Certificates of Title Nos. 9388 and 90756, respectively, registered with the Registry District of Norfolk County in Book 47, Page 188 and Book 454, Page 156, respectively.

All of the aforesaid property granted within each County is shown in red outline on a series of Valuation Plans recorded with the deed granting the aforesaid property in the Registry of Deeds in the appropriate County.

**EXHIBIT G**

**2009 OPERATING AGREEMENT  
BETWEEN THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
AND CSX TRANSPORTATION, INC.**

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## INTRODUCTION AND RECITALS

The Massachusetts Bay Transportation Authority (the "MBTA") and CSX Transportation, Inc. ("CSXT") (hereinafter the "Parties," or each a "Party"), enter into this 2009 Operating Agreement (the "Agreement") as of the Execution Date (defined below) in order to memorialize their mutual understanding with regard to certain rights to conduct passenger and freight services on property owned by the Commonwealth of Massachusetts, by and through its Executive Office of Transportation ("EOT"), or the MBTA, and for the purpose of defining their respective rights and obligations with respect to the same. As of the Effective Date (defined below), this Agreement shall supersede and replace that certain agreement between CONRAIL and the MBTA dated September 19, 1994 regarding the rail line from Framingham, Massachusetts to Worcester, Massachusetts with respect to Rail Properties (as defined herein).

Whereas CSXT, the Commonwealth of Massachusetts, through its Executive Office of Transportation and Public Safety, and the MBTA entered into a Definitive Agreement as of October 1, 1999 for the transfer of ownership of certain rail properties in the Commonwealth of Massachusetts or its designee; and

2009  
Operating  
Agreement

Whereas CSXT has retained certain perpetual, exclusive, freight easement rights over the MBTA Rail Properties, as defined herein.

Now, therefore, the Parties agree as follows:

### SECTION 1. DEFINITIONS.

Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Definitive Agreement (as hereafter defined). For the purposes of this Agreement:

"Amtrak" means the National Railroad Passenger Corporation.

"Amtrak Agreement" means the Agreement by and between CSXT and Amtrak dated as of June 1, 1999.

"Appropriate Statutory and Regulatory Authority" means 49 U.S.C. §10903, et seq. and 49 C.F.R. part 1152 and the STB's interpretations thereof.

"Car Mile" means a railroad car or locomotive, whether or not loaded, moved one mile.

"CSXT" means CSX Transportation, Inc., a Virginia corporation, as well as any successor or assign duly recognized by the Surface Transportation Board, if necessary.

"CSXT Easement" shall, from the Execution Date until the Effective Date, have the meaning given to that term in the Definitive Agreement. From and after the Effective Date, "CSXT Easement" shall mean CSXT's easement rights as described in any deed or deeds transferring the MBTA Rail Properties pursuant to the Definitive Agreement, which deed or deeds, when recorded, shall be attached hereto as Exhibit B.

**“CSXT Freight Rail Service”** means the full range of services and activities performed by CSXT (or any assignee of the CSXT Easement) in connection with its provision of rail service in the Commonwealth of Massachusetts.

**“CSXT Rail Service”** means (i) CSXT Freight Rail Service, and, to the extent that the Amtrak Agreement is in effect, (ii) Intercity Rail Passenger Service and all obligations of CSXT under the Amtrak Agreement (or under law) to permit, accommodate or facilitate Amtrak’s providing of Intercity Rail Passenger Service.

**“Definitive Agreement”** means that certain Definitive Agreement, dated as of October 10, 2008, as may be amended, by and between the Commonwealth of Massachusetts acting by and through its Executive Office of Transportation and CSXT.

**“Effective Date”** means the Second Closing Date. The Parties shall confirm the Effective Date by letter agreement after the Second Closing has occurred, and may add such Effective Date here: \_\_\_\_\_.

**“Effective Interest Rate”** means the lesser of (i) twelve percent (12%) per annum or (ii) the fluctuating rate per annum equal to the Prime Rate plus two percent (2.0%). “Prime Rate” means the Prime Rate as from time to time published in the Money Rates Section of The Wall Street Journal. The rate described in clause (ii) of this definition shall change on the date of each change in the Prime Rate, and if such change results in a change to the Effective Interest Rate applicable to any amount due under this agreement, the new Effective Interest Rate shall be applied as of such date.

**“Execution Date”** means the date set forth on the signature page of this Agreement.

**“Extension Notice”** shall have the meaning set forth in paragraph 2.6(b).

**“Freight Only Rail Properties”** means those segments of the MBTA Rail Properties that are not used by the MBTA for the provision of passenger rail service, as listed on **Exhibit A** and described in Section 3, along with the tracks, if any, constructed by CSXT after the date hereof pursuant to the Third Track Improvements Agreement.

**“FRA”** means the Federal Railroad Administration.

**“FRA Track Safety Regulations”** means the regulations promulgated by FRA, currently codified at 49 C.F.R. Parts 200-268 and in effect as of December 1, 2005, as amended from time to time.

**“Intercity Rail Passenger Service”** means all transportation of intercity passengers by rail provided by Amtrak, or as may be provided by others, on the MBTA Rail Properties.

**“Joint Usage Rail Properties”** refers to those segments of the MBTA Rail Properties used by the MBTA for passenger rail service, as listed on **Exhibit A** and described in Section 2. The line of demarcation between Joint Usage Rail Properties and adjacent Freight Only Rail Properties shall be the point of clearance from or to the track adjacent to the primary tracks on the Joint Usage Rail Properties utilized for MBTA Commuter Rail Services.

**“Maintenance Services”** has the meaning set forth herein and in **Exhibit C**, attached hereto and incorporated herein.

**“MBTA”** means the Massachusetts Bay Transportation Authority, a body politic and corporate created by and acting pursuant to St. 1964, c. 563, as amended.

**“MBTA Commuter Rail Services”** means all of the rail operations, including movement of MBTA materials and equipment, services and activities performed by the MBTA and its commuter rail Operating Contractor (or their respective assignees or designees) in connection with the provision of commuter rail service on the MBTA Rail Properties.

**“MBTA Rail Properties”** means the properties within the entirety of the right of way named on **Exhibit A**. MBTA Rail Properties shall be designated Joint Usage Rail Properties or Freight Only Rail Properties, and the designation of each of the MBTA Rail Properties shall be listed on **Exhibit A**. The Parties shall update **Exhibit A** at the time of the closing of the acquisition of any properties that the Parties, by mutual agreement, desire to include within the MBTA Rail Properties, and to thereafter reflect any additions to or changes in designation that the Parties mutually agree to during the Term of this Agreement.

**“Operating Contractor”** means any entity contracted with by the MBTA to provide commuter rail services on behalf of the MBTA.

**“Parties”** means CSXT and MBTA.

**“Person”** means any individual, corporation, partnership, association, trust or any other entity or organization, including, without limitation, a government, a public agency, political instrumentality or political subdivision or authority.

**“Required Insurance Amount”** means the greater of (i) the Statutory Limit as that amount may from time to time be modified by the Massachusetts General Court or (ii) Seventy-Five Million Dollars (\$75,000,000.00).

**“Response Date”** shall have the meaning set forth in paragraph 2.6(b).

**“Statutory Limit”** means the limitation placed by Massachusetts General Laws chapter 161A, Section 43 on the exposure of the Parties to certain liability.

**“STB”** means the Surface Transportation Board.

## **SECTION 2. JOINT USAGE RAIL PROPERTIES.**

The provisions of this Section 2 shall apply to the Joint Usage Rail Properties.

### **2.1 Access to Joint Usage Rail Properties.**

Subject to the provisions of this Agreement, CSXT may use the CSXT Easement (i) to provide CSXT Freight Rail Service on, and to enter upon and utilize the existing tracks and related operating facilities on those MBTA Rail Properties described on **Exhibit A** hereto as



“Joint Usage Rail Properties,” and (ii) perform its obligations to Amtrak under the Amtrak Agreement and as provided by law, *provided however*, that CSXT’s use of such properties shall be subject to the conditions set forth in this Agreement, and *provided further* that MBTA covenants and agrees that it will not transport, and it will not grant any rights with respect to, or otherwise permit any Person other than CSXT to transport freight over such Joint Usage Rail Properties, but the Parties agree that the MBTA shall have the right to use the Joint Usage Rail Properties in accordance with the operating windows described in Section 2.2(b) below to transport baggage and other equipment and material for use by or for the MBTA, its agents or contractors. The access rights granted herein are granted for the purpose of permitting the CSXT Rail Service, including without limitation, permitting CSXT to operate freight trains and related switching movements and CSXT shall have access to all running, side, switching, yard, and interchange tracks included in Joint Usage Rail Properties and existing on the Effective Date of this Agreement, and necessary for the provision of the CSXT Rail Service, all subject to and consistent with the conditions set forth herein.

## 2.2 Limitations on Access Rights.

The rights of CSXT described above shall be limited as follows:

(a) Joint Usage Rail Properties shall be jointly used by CSXT for CSXT Rail Service and related uses and by the MBTA for MBTA Commuter Rail Services and related uses, in accordance with the terms set forth herein. Nothing in this Agreement shall derogate from MBTA’s right to utilize, directly or through its Operating Contractor, or to permit other carrier(s) to utilize any MBTA Rail Properties for the provision of MBTA Commuter Rail Services, including without limitation, long-haul intercity passenger service as well as other passenger service, provided that such utilization (i) is not in violation of the access rights granted to CSXT pursuant to the provisions of this Agreement and (ii) does not interfere with or impair CSXT’s performance of its obligations under the Amtrak Agreement (if then in effect).

(b) CSXT’s right to operate on the Boston Main Line portion of the Joint Usage Rail Properties from Framingham to Worcester shall conform to the following schedule:

(1) *A.M. Peak Window:* from 5:00 a.m. (05:00) to 09:45 a.m. (09:45), which shall be the Priority Passenger Morning Rush Hour, allowing one scheduled freight train to operate in one direction only from Westborough to Worcester during each such A.M. Peak Window (with additional freight trains allowed on a non-priority basis),

(2) *P.M. Peak Window:* from 4:00 p.m. (16:00) to 10 p.m. (22:00), which shall be the Priority Passenger Evening Rush Hour, allowing one scheduled freight train in one direction only from Westborough to Worcester during each such P.M. Peak Window (with additional freight trains allowed on a non-priority basis);

(3) *Midday Window:* from 09:46 a.m. (09:46) to 3:59 p.m. (15:59), which shall be the Mid-Day Window, allowing a mixed passenger/freight use with passenger rail priority consistent with the general protocols described in paragraph 2.2(c) below. The MBTA may add up to twelve (12) additional MBTA passenger trains beyond those scheduled as of June 30, 2009, and CSXT may add up to four (4) additional freight trains beyond those freight trains

operating as of June 30, 2009, provided that by mutual agreement in writing, the Parties may expand the number of trains beyond such additional trains;

(4) *Late Night Window*: from 10:01 p.m. (22:01) to 12 midnight, which shall be the Late Night Window, there shall be a mixed passenger/freight use allowing scheduled MBTA passenger trains running in scheduled slots to have priority to run in either direction; either party may increase the number of its trains, provided that any added train does not materially interfere with the previously approved scheduled trains of the other party; subject to the foregoing conditions, the number and schedules of trains of each party shall be established by mutual agreement, not to be unreasonably withheld, delayed or conditioned; and

(5) *Midnight Window*: from 12:01 a.m. (00:01) to 4:59 a.m. (04:59), which shall be the Midnight Window, priority shall be given to freight use, with passenger rail priority for the three (3) scheduled MBTA passenger trains (each in one direction only) during the Midnight Window but subject to adjustments to such schedules of up to 10 minutes for each such train (with additional passenger trains allowed on a non-priority basis).

(c) Subject to and consistent with the provisions of paragraph (b) above, the MBTA shall establish a dispatching protocol for the Joint Usage Properties that (i) will minimize negative impacts on each other's trains in all time periods, (ii) will allow reasonable flexibility within the structure described herein in order to accommodate the movement of each other's trains (including without limitation scheduled and unscheduled CSXT trains), provided however that in all circumstances a scheduled commuter rail train shall hold a priority for as long as it maintains its schedule within a period no longer than ten minutes later than its scheduled time, and (iii) will accommodate the movements of Amtrak trains in accordance with the Amtrak Agreement or any successor agreement between MBTA and Amtrak and applicable law.

(d) The MBTA will schedule its trains as it determines necessary in compliance with this Section 2.2. Should the MBTA seek to schedule passenger trains not in compliance with Section 2.2 ("Non-conforming Trains"), it shall submit such request to CSXT for its prior approval, which approval if but only if the operation of such Non-conforming Trains does not interfere with or impair CSXT's operations or interfere with or impair CSXT's performance of its obligations to Amtrak under the Amtrak Agreement (if then in effect), shall not be unreasonably withheld, conditioned, or delayed.

(e) Subject to MBTA's ownership, maintenance, dispatching control and protocols for the Joint Usage Rail Properties, the Parties acknowledge and agree that on Track 2 of the Boston Main Line between CP-43 and CP-39, CSXT is authorized to use said Track 2 in accordance with the Track 2 Operating Rules.

### 2.3 CSXT Usage Levels and Related Alterations.

(a) The MBTA shall, at all times, allow CSXT access to all of CSXT's freight service locations consistent with Section 2.2 above.

(b) The MBTA shall maintain clearance and load carrying capacity on Joint Usage Rail Properties and Freight Only Rail Properties at or equal to the published limit existing thereon as of the date of this Agreement. The MBTA shall not install any new track nor relocate

any existing track less than 13 feet (not less than 14 feet wherever reasonably feasible) centerline to centerline from any other track if either track is being used by CSXT in its freight service. Where existing track is being reconstructed or former trackage is being reinstalled, MBTA shall have the option of reconstructing or reinstalling such track to clearances and alignments existing immediately prior to the commencement of such reconstruction or reinstallation.

(c) Notwithstanding any other provision of this Agreement to the contrary, MBTA shall not, without the prior written consent of CSXT (i) grant or convey to others after the date hereof any interest, easement, lease, license or right of occupancy nor (ii) cause or permit the building, construction, alteration, erection, installation, demolition or removal of any structure or facility except as described below, on the Joint Usage Rail Properties or the Freight Only Rail Properties within the following clearances on any of the below specified track segments:

- (i) Boston Main Line segment between Worcester and Route I-495 bridge in Westboro:
  - (A) Lateral clearances of not less than 15 feet from either side of the centerline of any track; and
  - (B) Vertical clearances for the entire lateral clearance width aforesaid of not less than 23 feet above the top of each rail of any such track.
- (ii) Boston Main Line segment between Route I-495 bridge in Westboro and Framingham:
  - (A) Lateral clearances of not less than 15 feet from either side of the centerline of any track; and
  - (B) Vertical clearances for the entire lateral clearance width aforesaid of not less than 19 feet 6 inches above the top of each rail of any such track.
- (iii) Other Joint Usage Rail Property or Freight Only Rail Property:
  - (A) Lateral clearances of not less than 15 feet from either side of the centerline of any track; and
  - (B) Vertical clearances for the entire lateral clearance width aforesaid of not less than 23 feet above the top of each rail of any such track.
- (iv) Tracks passing through Commuter Rail Platforms:

MBTA may reconstruct platforms or expand at grade or mini-high platforms with retractable edges for passenger service existing as of June 30,

2009, consistent with clearance dimensions existing for such reconstructed platforms on such date.

(v) All Joint Usage Rail Properties or the Freight Only Rail Properties Tracks:

Plans and specifications for construction of any subsurface facilities to be built under the tracks must be reviewed and approved by both MBTA and CSXT pursuant to each Party's then current and published engineering specifications for facilities of like type and condition.

(d) In handling excess dimension, wide load movements over MBTA Rail Properties on which MBTA has installed a handicap platform with a retractable edge, CSXT shall follow the operating procedures set forth in Exhibit D hereto, *provided however*, any failure by either party to follow the operating procedures set forth in Exhibit D shall in no way modify, alter or amend the liability and responsibility for damage and indemnities set forth in Section 10 hereof.

(e) The MBTA shall, as determined by CSXT to be reasonably necessary, ensure that CSXT is furnished with tracks, bridges and culverts for the operation of the CSXT Rail Service that are materially similar to those tracks, bridges and culverts that exist as of the Effective Date.

## 2.4 Control and Management.

(a) MBTA retains the right to exercise and to perform, or to delegate or subcontract to another entity, the performance of the management, regulatory and operational control of any and all rail service over MBTA Rail Properties (including Joint Usage Rail Properties) including, without limitation, dispatching and control of all trains, provided that such control shall be exercised in a manner which does not violate CSXT rights to use MBTA Rail Properties, as set forth in this Agreement. In the exercise of its control over Joint Usage Properties, the MBTA will give priority to MBTA passenger trains (subject to and in accordance with the provisions of Section 2.2(b) above and the rights of Amtrak under the Amtrak Agreement) over all other train scheduling, dispatching and control, including without limitation freight service, but will make all reasonable efforts to expedite the movement of freight trains, including expediting repairs to lines, removing obstructions, and scheduling regular maintenance and repair programs at hours which will not unreasonably interfere with such movement.

(b) The MBTA shall ensure that its contractors and subcontractors performing work or services on the Joint Usage Rail Properties pursuant to this Section 2 perform and complete their respective work or services in accordance with this Agreement for the provision of such work or services. The MBTA, and not CSXT, shall be liable for all liability, cost, and expense arising out of or connected with any failure of such contractor or subcontractors to perform, and (except as the Parties may agree by written agreement) shall bear all cost or expense in connection with the performance, or failure to perform, of such contractors or subcontractors.

## 2.5 Maintenance

**(a) Provision of Maintenance Services.**

**(1) The MBTA shall provide all Maintenance Services for Joint Usage Rail Properties in accordance with this Agreement, including the applicable maintenance standards described in paragraph 2.5(a)(3) below. All maintenance shall be undertaken in a manner that does not unreasonably interfere with train operations. The MBTA shall use its best efforts to schedule Maintenance Services between the hours of 7 a.m. and 7 p.m., and in a manner that is fairly apportioned among the applicable windows of operation during that period. The Parties acknowledge and agree, however, that certain work, such as work on grade crossings and bridge replacements, often must be performed between 7 p.m. and 7 a.m. In all circumstances where a track outage is required for the performance of maintenance (except emergency Maintenance Services), such maintenance work shall be scheduled at least fifteen (15) days in advance of any such track outage.**

**(2) Where facilities, including utilities, electricity or plumbing property, or drainage property, extend from property maintained by one Party to property maintained by the other Party, the Parties shall determine a line of demarcation which delineates which segment of such facilities are to be maintained by each Party.**

**(3) The MBTA shall maintain all Joint Usage Rail Property rights-of-way, tracks, bridges, culverts, signals, communications equipment and all appurtenances in compliance with standards to be set from time to time by the MBTA which in all instances shall be appropriate for both passenger and freight rail operations and which shall always meet or exceed the standard required by FRA rules and regulations for the agreed upon designated class of track, provided that in no event shall the rating of any bridge rebuilt by MBTA after the Effective Date be less than that existing as of the Effective Date. If CSXT requests that the MBTA maintain a portion of the Joint Usage Rail Properties to a standard that exceeds the standard described above, the MBTA shall perform all work required to meet such standard, and CSXT shall be responsible for all incremental costs and expenses of maintaining such property to the standard requested by CSXT. The MBTA shall provide CSXT with at least thirty (30) days prior written notice of any proposed changes to the maintenance standards that are likely to affect CSXT operations. The Parties shall cooperate and use good faith efforts to reach agreement with respect to the adoption and implementation of such changes. If at any time CSXT in good faith determines that such maintenance work has not been performed by the MBTA at a level required pursuant to this paragraph for the agreed upon designated class of track in question, CSXT shall notify the MBTA in writing and the MBTA shall, within thirty (30) days of receipt of such notice, take such action as may be necessary to bring such track to the standard so required.**

**(4) The MBTA shall provide and furnish all labor, administrative, professional, and supervisory personnel necessary for the performance of its obligations under this Agreement. All MBTA personnel or MBTA contractor personnel involved in any aspect of providing services under this Agreement shall be subject to the direction, supervision, and control of the MBTA, and not CSXT. The MBTA shall be solely responsible for all labor relations issues relating to MBTA employees that arise in connection with the performance of services under this Agreement.**

(b) Unless otherwise stated explicitly in this Agreement, the MBTA shall be responsible for the costs of materials, equipment, management, and other expenses required for the performance of its maintenance responsibilities under this Section 2, provided however that capital work outside of the MBTA's maintenance responsibilities shall be performed by the MBTA pursuant to Section 4 herein.

## **2.6 General.**

(a) Notwithstanding anything herein to the contrary, MBTA shall have the exclusive right to secure such approvals of regulatory or governmental bodies for such work on Joint Usage Rail Properties as may be necessary, including, without limitation, the FRA, and Massachusetts Department of Public Utilities, and no approval of CSXT shall be required for the performance of any work on Joint Usage Rail Properties except as may be expressly provided herein.

(b) Subject to and consistent with the other provisions of this Agreement, the MBTA may grant access to the Joint Usage Rail Properties to third parties, including but not limited to utilities providers, to perform work on such third parties' own behalf. The MBTA shall provide at least fourteen (14) days prior written notice (or with respect to emergency services, such lesser notice as is reasonable in the circumstances) to CSXT of all such work that will have an impact on CSXT operations and obtain CSXT's consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed, provided however, in the event such work, in CSXT's reasonable determination, will have an impact on CSXT operations for a period longer than seven (7) days, then CSXT in its sole discretion may, within fourteen (14) days of receipt of such notice, notify the MBTA in writing (the "Extension Notice") that CSXT requires additional time in which to evaluate the matter and shall indicate in such Extension Notice the estimated date (the "Response Date") by which CSXT expects to be able to provide notice to MBTA of its consent or withholding of consent. If CSXT so provides to MBTA a timely Extension Notice, then CSXT shall provide its response prior to the Response Date.

## **SECTION 3. FREIGHT ONLY RAIL PROPERTIES**

The provisions of this Section 3 shall apply to the Freight Only Rail Properties.

### **3.1 Access to Freight Only Rail Properties.**

Subject to the provisions of this Agreement, CSXT may use the CSXT Easement to enter upon and to utilize the tracks and related operating facilities described on Exhibit A hereto (and such additional properties as the Parties may mutually agree to add to said Exhibit A after the date hereof) as "Freight Only Rail Properties," for the purpose of performing CSXT Rail Service, and MBTA covenants and agrees that it will not transport, and it will not grant any rights with respect to, or otherwise permit any Person other than CSXT to transport, freight over such Freight Only Rail Properties, provided, however, that CSXT's use of such properties shall be subject to the conditions set forth in this Agreement. Infrequent use by the MBTA of the Freight Only Rail Properties by MBTA trains or equipment shall not change the designation of the Freight Only Rail Properties to Joint Use Rail Properties.

### **3.2 Limitation on Access Rights.**

(a) The MBTA shall have the right, after reasonable notice and agreement with CSXT as to scheduling, to enter onto and use the Freight Only Rail Properties for the purpose of maintaining the Joint Usage Rail Properties adjacent to such Freight Only Rail Properties, provided that the MBTA will make best efforts to minimize any interference with CSXT usage of the Freight Only Rail Properties. The foregoing access rights to the Freight Only Rail Properties shall be perpetual and CSXT shall, in the event that CSXT, in its sole discretion, elects to abandon the use of or transfer any Freight Only Rail Properties, and subject to any Appropriate Statutory and Regulatory Authority, either (i) transfer the CSXT Easement over, and the title to the track located on, such Freight Only Rail Properties to MBTA, or (ii) otherwise ensure that MBTA continues to be afforded such access rights.

(b) The Parties recognize and agree that the tracks on the Freight Only Rail Properties remain owned by CSXT. Accordingly, except as expressly provided herein, nothing in this Agreement shall be construed to grant to MBTA a right to affect Freight Only Rail Properties, including, without limitation, alterations thereto, relocations, use of air or subsurface rights for development or other purposes, or the granting of easements for utilities and crossings, without the consent of CSXT, which consent shall not be unreasonably withheld, conditioned or delayed, and provided further that it shall not be unreasonable for CSXT to withhold consent if such actions will interfere with CSXT operations on such track, including without limitation, CSXT's unimpeded ingress and egress from and to the adjacent yards and Joint Usage Rail Properties.

(c) CSXT shall have the right to use Freight Only Rail Properties at such levels of activity as CSXT deems to be appropriate, without the prior written consent of the MBTA.

(d) The MBTA shall, as determined by CSXT to be reasonably necessary, ensure that CSXT is furnished with tracks, bridges and culverts for the operation of the CSXT Rail Service that are materially similar to those tracks, bridges and culverts, that exist as of the Effective Date.

(e) Subject to and consistent with the other provisions of this Agreement, the MBTA may grant access to the Freight Only Rail Properties to third parties, including but not limited to utilities providers, to perform work on such third parties' own behalf. The MBTA shall provide at least fourteen (14) days prior written notice (or with respect to emergency services, such lesser notice as is reasonable in the circumstances) to CSXT of all such work that will have an impact on CSXT operations and obtain CSXT's consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed, *provided however*, in the event such work, in CSXT's reasonable determination, will have an impact on CSXT operations for a period longer than seven (7) days, then CSXT in its sole discretion may, within fourteen (14) days of receipt of such notice, provide to the MBTA an Extension Notice and provided further that CSXT shall not be required to permit onto the Freight Only Rail Properties any person who does not present identification reasonably satisfactory to CSXT that such person has been granted access by MBTA. If CSXT so provides to MBTA a timely Extension Notice, then CSXT shall provide its response prior to the Response Date.

### 3.3 Maintenance and Control by CSXT.

(a) CSXT shall be solely responsible for the dispatching and control of all trains over the Freight Only Rail Properties in accordance with the terms of this Agreement. CSXT shall provide at its sole cost and expense all Maintenance Services for Freight Only Rail Properties. CSXT shall maintain all tracks to whatever standard CSXT chooses in its sole discretion, but at least to the standard required by rules and regulations established by FRA and any other federal or state agency with jurisdiction over the tracks for each class of track, and shall maintain signals and communications equipment to the standards required by FRA rules and regulations. CSXT shall provide the MBTA with a written notice of any changes to the Maintenance Standards that may affect MBTA operations in advance of implementation of such changes. CSXT shall be responsible for repairing all damage to the Freight Only Rail Properties, and for maintaining the Freight Only Rail Properties in the same condition that they are in as of the date of this Agreement except that the MBTA shall be responsible for any damages to the Freight Only Rail Properties that are caused by the MBTA or any of its contractors.

(b) CSXT shall provide and furnish all labor, administrative, professional, and supervisory personnel necessary for the performance of its obligations under this Agreement. All CSXT personnel or CSXT contractor personnel involved in any aspect of providing services under this Section 3.3 shall be subject to the direction, supervision, and control of CSXT, and not the MBTA. CSXT shall be solely responsible for all labor relations issues relating to CSXT employees that arise in connection with performance of services under this Agreement.

### 3.4 General

(a) Each Party (or its contractors) shall be solely responsible for the determination of and payment of wages and benefits and other terms and conditions of employment of all such Party's employees; provided, however, that such Party shall comply with any applicable mandatory federal or state prevailing wage rate, safety, or wage/hour laws.

(b) The provisions of this Section do not apply to or otherwise affect the MBTA's right to perform Maintenance Services on Joint Use Rail Properties as required by this Agreement.

(c) Notwithstanding anything herein to the contrary, MBTA shall have the right to secure such approvals of regulatory or governmental bodies for such work on Freight Only Rail Properties as may be necessary, including, without limitation, the FRA and Massachusetts Department of Public Utilities and no approval of CSXT shall be required for the performance of any work on Freight Only Rail Properties, except as may be expressly provided herein and provided that the MBTA provides reasonable advance notice to CSXT of such work and schedule for CSXT's approval, not to be unreasonably withheld, conditioned, or delayed.

### 3.5 MBTA Access to Certain CSXT-Owned Properties

CSXT shall allow, on a non-routine basis, MBTA trains to proceed westerly through CP45 on rail property owned by CSXT to return to Boston on Track 1 or Track 2, pursuant to established dispatching protocol.



## **SECTION 4. CAPITAL WORK**

### **4.1 Improvements at the Request of CSXT.**

MBTA, at CSXT's written request, shall improve the track and facilities CSXT uses or may use on the MBTA Rail Properties (including, without limitation, installing switches and siding, including any associated signaling to service any new locations), all in accordance with any written specifications set forth by CSXT in such written request, provided that:

(a) the MBTA and CSXT have agreed upon a reasonable allocation of the costs of any such improvements, based on whether and to what extent the MBTA would benefit from such improvements. Nothing in this Section 4.1 shall obligate the MBTA to contribute to the cost of rebuilding or restoring any improvements after a casualty to the extent that any other provision of this Agreement (i) authorizes the MBTA not to rebuild or restore such improvement and (ii) the MBTA has not elected to rebuild such improvement.

(b) any such requested improvements shall be subject to the prior written approval of the MBTA, which shall be given if the MBTA determines that neither such improvements nor the construction required for such improvements will interfere with or unduly limit the MBTA's present or anticipated reasonable future operations or impair the current usefulness of trackage and facilities;

(c) any such improvements shall be made by the MBTA with as little disruption as reasonably possible to the MBTA's passenger rail operations, including passenger trains serving special civic, sports or other events over the MBTA Rail Properties in an infrequent and temporary manner;

(d) CSXT shall be solely responsible for any and all incremental costs associated with the operation and maintenance of such improvements. CSXT shall assume full responsibility for the cost of removing or relocating all improvements that are made solely for the benefit of CSXT;

(e) any such improvements or modifications to the MBTA Rail Properties shall become the property of the MBTA upon completion. The MBTA's acceptance of ownership of improvements prior to completion of the improvements shall be at the sole discretion of the MBTA; and

(f) in the event that the MBTA engages a third party to perform such improvements, the MBTA shall submit design plans for work to be performed (if such work necessitates design plans) to CSXT for its review and approval (which shall not be unreasonably withheld, conditioned, or delayed) no fewer than forty-five (45) days before the commencement of such work.

### **4.2 CSXT Reimbursement of MBTA.**

In the event that the MBTA performs any capital work or maintenance work that is not the obligation of the MBTA under Section 2 hereof, at the request of CSXT, CSXT shall reimburse the MBTA for the actual, auditable costs of such work (except for costs to be borne by

the MBTA pursuant to Section 4.1(a) above), plus a management fee equal to 16% of the amount of such costs.

## **SECTION 5. DISCONTINUANCE OF FREIGHT RAIL OPERATIONS**

### **5.1 CSXT-Initiated Abandonment or Discontinuance.**

In the event that CSXT shall cease to have current use, or, in CSXT's sole and absolute determination, reasonably foreseeable future use, of any segment of the Joint Usage Rail Properties or Freight Only Rail Properties, or, if in CSXT's sole and absolute discretion it determines that it no longer wishes to continue the use of any such segment for CSXT Freight Rail Service, CSXT shall have the option to seek (and the MBTA agrees not to oppose such action) from the STB, Appropriate Statutory and Regulatory Authority, including without limitation, exemption from the requirement to obtain such authority, to abandon and/or discontinue CSXT Freight Rail Service over all or any portion of such segment of the Joint Usage Rail Properties or Freight Only Rail Properties. Such portions of the Joint Usage Rail Properties or Freight Only Rail Properties shall no longer be subject to this Agreement, but shall continue to be subject to the rights of Amtrak under the Amtrak Agreement (if then in effect) and applicable law.

### **5.2 MBTA Request for Abandonment or Discontinuance.**

In the event CSXT has not provided CSXT Freight Rail Service over any segment of the Joint Usage Rail Properties or Freight Only Rail Properties for a continuous period of eight (8) years, CSXT shall, promptly following MBTA's written request, (a) seek Appropriate Statutory and Regulatory Authority from the STB, including without limitation, exemption from the requirement to obtain such authority to discontinue and/or abandon CSXT Freight Rail Service over all or any portion of such segment of the Joint Usage Rail Properties or Freight Only Rail Properties. CSXT shall promptly (within three (3) days) notify MBTA upon the date such authority to discontinue service becomes effective or authority to abandon is consummated with respect to such portions of the Joint Usage Rail Properties or Freight Rail Properties, whether through an exemption or otherwise, and such properties thereafter shall no longer be subject to this Agreement, but shall continue to be subject to the rights of Amtrak under the Amtrak Agreement (if then in effect) and applicable law, or (b) fully assist the MBTA in adverse abandonment filings, after which, if such adverse abandonment proceedings are successfully consummated with respect to such portions of the Joint Usage Rail Properties or Freight Rail Properties, such properties shall no longer be subject to this Agreement, but shall continue to be subject to the rights of Amtrak under the Amtrak Agreement (if then in effect) and applicable law.

### **5.3 MBTA Petition for Abandonment or Discontinuance.**

In the event that for a continuous period of three (3) years, CSXT has failed to provide CSXT Freight Rail Service on any segment of the Joint Use Rail Properties or Freight Only Rail Properties (provided any such failure is not a direct or indirect result of the failure of MBTA to properly maintain or repair the Joint Use Rail Properties or of any other breach by MBTA of its obligations under this Agreement), then MBTA shall be entitled, in its sole discretion, to

commence adverse abandonment proceedings with the STB with respect to such segments, provided however, CSXT may oppose such proceedings and shall have no obligation to assist MBTA or to otherwise cooperate or participate in such proceedings in any way. If such adverse abandonment proceedings are successfully consummated with respect to such portions of the Joint Usage Rail Properties or Freight Only Rail Properties, such properties shall no longer be subject to this Agreement, but shall continue to be subject to the rights of Amtrak under the Amtrak Agreement (if then in effect) and applicable law.

#### 5.4 Limitations on Adverse Abandonment.

The MBTA hereby agrees that it will not commence or otherwise seek or pursue any adverse abandonment proceedings with the STB except as permitted by Sections 5.2 and 5.3.

### SECTION 6. COMPENSATION

#### 6.1 Elements of Compensation.

Except for fees, charges and reimbursements expressly provided for elsewhere in this Agreement, the sole compensation to MBTA for all services to be rendered by it pursuant to the terms of this Agreement (including, without limitation, all maintenance and dispatch services), shall be:

(a) a Car Mile charge subject to revision from time to time as provided in Section 6.4 below, equal to forty-three and three-tenths cents (\$0.433) per Car Mile of CSXT trains over the Joint Usage Rail Properties (the “Car Mile Charge”). Billing and payment of the Car Mile Charge shall be as described in Section 6.3 below.

(b) a signal charge (the “Signal Charge”) determined as follows:

(1) The Parties shall agree upon CSXT’s percentage share of the costs of signal and switching maintenance costs based on the ratio of the number of CSXT trains operating on the Joint Usage Rail Properties during the calendar month immediately following the month in which the Effective Date falls to the total trains (MBTA trains and CSXT trains) operating on the Joint Usage Rail Properties during such month (the “CSXT Signal Charge Share”).

(2) The Signal Charge shall be calculated by multiplying the CSXT Signal Charge Share by the monthly signal and switching maintenance costs (the “Monthly Signal Costs”), which Monthly Signal Costs shall be \$53,333 as adjusted pursuant to Section 6.4 below.

(3) During the Term of this Agreement, either Party may request a recalculation of the CSXT Signal Charge Share to reflect material changes in the number of trains operated by either Party, in which event the Parties shall recalculate and agree upon such revised share and shall apply such new CSXT Signal Charge Share to future months.

(c) a charge for dispatching, wherein CSXT shall reimburse MBTA for the cost of dispatching so long as the number of scheduled CSXT freight trains between

Framingham and Worcester does not exceed six (6) per day. This cost, subject to revision from time to time as provided in Section 6.4 below, shall be one hundred one thousand six hundred ninety and 73/100 dollars (\$101,690.73) per year, provided however, when scheduled CSXT freight train dispatchments between Framingham and Worcester exceed six (6) trains per day, whether for a year or any portion thereof, the cost shall be 1.5 times the then current cost (the "Dispatching Charge" and together with the Car Mile Charge and the Monthly Signal Costs, the "Usage Charges"). This cost shall be billable monthly; plus

(d) costs identified in Section 4.2 herein.

## 6.2 Payment.

Within thirty (30) days of the end of each calendar month, CSXT shall send to the MBTA written notice of the number of Car Miles traveled on each segment of the Joint Usage Rail Properties. The MBTA shall calculate the amount due (the "Car Mile Payment") for such month by multiplying the number of Car Miles traveled by the Car Mile Charge, and shall send CSXT an invoice for such amount after receiving notice of the Car Miles traveled. Such invoice shall also set forth the Signal Charge and Dispatching Charge for such month. The MBTA shall issue the first invoice following the end of the first full calendar month after the Effective Date, with the Car Mile Charge, Signal Charge, and Dispatching Charge pro-rated for the month in which the Effective Date falls.

CSXT shall pay the Car Mile Payment for each month within ninety (90) calendar days of the last day of such month. Any such payments shall show the number of Car Miles, as applicable, traveled during the Applicable Month by each segment on the MBTA Rail Properties.

## 6.3 Audit of Car Miles Traveled; Billing Disputes.

(a) The MBTA shall have the right to audit the number of Car Miles traveled by CSXT, and CSXT shall, within thirty (30) days of a request for information, provide the MBTA with information supporting the number of Car Miles reported by CSXT for any period specified by the MBTA.

(b) Except as may otherwise be provided for herein, all payments called for under this Agreement shall be made by CSXT within sixty (60) days after receipt of bills therefor. Any discrepancies reconciled between the Parties hereto shall be adjusted in the accounts of the next month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be available during regular business hours for inspection by the other Party.

## 6.4 Revision of the Usage Charges.

Regardless of whether the Effective Date has yet occurred, beginning July 1, 2010, and each July thereafter, each of the Usage Charges shall be increased or decreased by the same percentage by which the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Recovery Index" and supplements thereto (the "Annual Indexes"), issued by the Association of American Railroads ("AAR") (or if such index ceases to be published, a generally recognized

index which is substantially equivalent to such Annual Indexes) has increased or decreased with each change to become effective July 1st of each calendar year. In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Usage Charges shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2009 Index for the first annual adjustment) as related to the index for the previous calendar year (2008 Index for the first annual adjustment) and applying that percent to the each of the Usage Charges. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2008; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2009; "C" to be the Car Mile Charge; and "D" to be the percent of increase or decrease; the revised Car Mile Charge stated herein would be revised by the following formula:

$$(a) \quad (B - A)/A \quad = \quad D$$

$$(b) \quad (D \times C) + C \quad = \quad \text{revised Car Mile Charge effective upon the July 1 of the year being revised.}$$

In the event the base for the Annual Indexes shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall resolve the matter pursuant to the dispute resolution provisions of Section 13 hereof.

## **SECTION 7. TERM**

The Parties have executed this Agreement on the Execution Date. The Term of this Agreement shall commence on the Effective Date and end on the date that is thirty (30) years from the Effective Date, unless terminated earlier pursuant to its terms. Notwithstanding the foregoing, the Parties agree that this Agreement shall remain in full force and effect during any interim period between the end of the Term of this Agreement (or the termination hereof for any reason other than mutual agreement of the Parties) and the execution of a new, revised, or extended operating agreement covering all of the MBTA Rail Properties. The Parties acknowledge that expiration or termination of this Agreement will not affect the validity, continuation or perpetual nature of the CSXT Easement or any other easement rights vested in CSXT with regard to the MBTA Rail Properties.

## **SECTION 8. AMTRAK**

### **8.1 Tracks and Bridges Used by Amtrak.**

Notwithstanding any provision of this Agreement to the contrary, it is understood by the Parties hereto that the MBTA shall furnish CSXT adequate facilities, including, without limitation, tracks, bridges and culverts, for CSXT's performance of its obligations to Amtrak under the Amtrak Agreement or as provided by law (provided that facilities substantially similar to those tracks, bridges and culverts that exist on the Effective Date shall be adequate for purposes of this Section 8.1, on that date, but subject thereafter to amendments to the Amtrak Agreement permitted under Section 8.2 below, and requirements of law). The Parties further

understand that the above provisions will apply until such time as MBTA and Amtrak enter into an agreement governing Amtrak's continued use of the MBTA Rail Properties in accordance with subsection (b) hereof.

## **8.2 Amtrak Agreement.**

MBTA and CSXT understand that Intercity Rail Passenger Service and the provision of ancillary services with respect thereto by Amtrak on the MBTA Rail Properties are governed by the Amtrak Agreement, a copy of which agreement has been furnished to MBTA. Until such time as MBTA enters into a separate contract with Amtrak, MBTA and CSXT hereby understand and agree that CSXT may modify or amend the Amtrak Agreement from time to time during the term of this Agreement and may enter into new agreements with Amtrak pertaining to Intercity Rail Passenger Service, all without the consent of MBTA, except as otherwise expressly provided below. CSXT shall obtain the prior written consent of MBTA (which consent shall not be unreasonably withheld, conditioned or delayed) to any such modification, amendment or new agreement in the event that any such action extends the term of the aforesaid Amtrak Agreement governing Amtrak's use of the MBTA Rail Properties beyond termination or replacement of the current Amtrak Agreement or results in a material decrease in the compensation paid by Amtrak for its use of the MBTA Rail Properties, provided, however, that such consent shall not be required in the event that any such action is otherwise required by law or any agreement in effect as of the Effective Date. CSXT shall also notify and consult with MBTA in the event of any change to Amtrak schedules for Amtrak trains operating on the MBTA Rail Properties during the periods specified in paragraph 2.2(b) hereof where such change would result in interruption or delay to passenger rail service on the MBTA Rail Properties. It is the understanding of the parties hereto that any agreement for renewal or extension of Amtrak's use of the MBTA Rail Properties beyond termination or replacement of the current Amtrak Agreement shall be a matter between the MBTA and Amtrak, and that the MBTA shall be entitled to or responsible for, as the case may be, any and all fees, rents, charges or income arising out of or connected with any such agreement between MBTA and Amtrak. CSXT shall have no interest in or right of participation in any revenue or income howsoever derived by MBTA from Amtrak for its use of the MBTA Rail Properties under any such agreement, and CSXT shall not be responsible for any cost or expense that may result from any such agreement. In the event that MBTA and Amtrak enter into any such agreement, such agreement shall (i) comply with all applicable laws, (ii) not alter, amend or modify the liability or indemnity obligations of Amtrak and CSXT towards one another under the Amtrak Agreement, (iii) not cause CSXT to be in violation of CSXT's obligations under the Amtrak Agreement as it applies to the MBTA Rail Properties and (iv) be subject to the CSXT Easement and CSXT's rights under this Agreement, including, without limitation, the windows referred to in this Agreement.

## **SECTION 9. ENVIRONMENTAL LIABILITY**

With respect to the MBTA Rail Properties, CSXT agrees to indemnify and hold the MBTA harmless from and against any claims, causes of action, damages, fines, or penalties arising with respect to any adverse environmental condition or environmental impairment that arises after the Effective Date to the extent caused by the acts or omissions of CSXT after the Effective Date on or about the MBTA Rail Properties. Such indemnity by CSXT pursuant to this Agreement shall not, however, extend to any such condition or impairment howsoever caused

prior to the Effective Date or results from actions or omissions of the MBTA (or its subcontractors and agents) or is created by the MBTA's operations (or those of the MBTA's subcontractors or agents) from and after the Effective Date. The MBTA agrees to indemnify and hold CSXT harmless from and against any claims, causes of action, damages, fines or penalties arising with respect to any adverse environmental conditions or environmental impairment created by the MBTA's operations (including those of its subcontractors or agents) after the Effective Date on or about the MBTA Rail Properties. This section shall not, however, (i) serve to terminate any rights or liabilities accruing under any other title instruments or agreements between the Parties, nor (ii) modify, amend or supersede the obligations, releases, indemnities and allocations of responsibility set forth in, or executed in connection with the Definitive Agreement or Section 10 of this Agreement.

## **SECTION 10. INDEMNIFICATION, LIABILITY AND INVESTIGATION**

### **10.1 Applicability and Definitions**

Financial responsibility for liability for personal injury or property damage arising from activities (including, without limitation, Incidental Use) on or about the MBTA Rail Properties covered by this Agreement shall be allocated as provided in this Section 10. Notwithstanding any other provision of this Agreement to the contrary, the following words and terms shall have the following meanings for purposes of this Section 10:

(a) "Commuter Rail Passenger(s)" shall mean and include any and all persons, ticketed or unticketed, using the MBTA Commuter Rail Services or engaged in any Incidental Use on or about the MBTA Rail Properties: first, while on board trains, locomotives, rail cars, or rail equipment employed in MBTA Commuter Rail Services and/or entraining and detraining therefrom; second, while on or about the MBTA Rail Properties for any purpose related to the MBTA Commuter Rail Services, including, without limitation, parking, inquiring about MBTA Commuter Rail Services or purchasing tickets therefor and coming to, waiting for, leaving from and/or observing rail commuter or other trains, locomotives, rail cars, or rail equipment; and, third, while on or about the MBTA Rail Properties for any purpose related to any Incidental Use thereof. The term Commuter Rail Passenger(s) shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence.

(b) "Covered Accident(s)" shall have the meaning set forth in paragraph 10.3(b).

(c) "Incidental Use" shall mean the use of ancillary services or facilities (whether or not on the MBTA Rail Properties) conducted or provided for the convenience and comfort of users of MBTA Commuter Rail Services which shall include, without limitation, the use of such facilities as restaurants, kiosks and retail facilities, a purpose or function of which is to serve the needs of users of MBTA Commuter Rail Services.

(d) "Other Invitee" shall mean any person or persons on or about the MBTA Rail Properties in connection with MBTA's (or the Operating Contractor's) use of the MBTA Rail Properties other than those persons on or about the MBTA Rail Properties to perform

Railroad Operations or to engage in Incidental Use. Other Invitee shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence.

(e) “Railroad Operations” shall mean any and all of the MBTA Commuter Rail Services, CSXT Freight Service and the Intercity Rail Passenger Service.

For the purpose of this Section 10, (i) the term “contractor” shall not be deemed to include Amtrak in its capacity as operator of rail services on its own behalf, (ii) neither Party shall be deemed to be a “contractor” of the other Party, and (iii) all trains, locomotives, rail cars, rail equipment, officers, agents, contractors and employees of the Operating Contractor shall be deemed to be trains, locomotives, rail cars, rail equipment, officers, agents, contractors and employees of MBTA.

## 10.2 Hold Harmless

Notwithstanding any other provision of this Agreement to the contrary, whenever any liability, cost or expense is to be assumed by, borne by or apportioned to a party hereto under any of the provisions of this Section 10, then that party shall forever protect, defend, indemnify and hold harmless the other party, its officers, agents and employees, from and against that liability, cost, and expense, assumed by that party or apportioned to it, regardless of whether or not the loss, damage, destruction, injury or death giving rise to any such liability, cost or expense is caused in whole or in part and to whatever nature or degree by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of that party, the other party, or its or their officers, agents and employees, and/or any other person or persons whomsoever, except as provided in paragraph 10.3(b) below. The Parties acknowledge and agree that as partial consideration for the above allocations and scope of liability to be borne by the MBTA hereunder, CSXT shall reimburse the MBTA for a portion of the annual premiums payable by the MBTA for its general liability insurance applicable to the MBTA Rail Properties, such portion to be initially Five Hundred Thousand Dollars (\$500,000) per year (the “Insurance Contribution”). The Insurance Contribution shall be revised annually by the same percentage as the Usage Charges are revised pursuant to Section 6.4 above.

## 10.3 General

(a) Except as is otherwise expressly provided by Section 10.3(b) or Section 10.4, whenever any loss of, damage to or destruction of any property whatsoever or injury to or death of any person or persons whomsoever occurs on or about the MBTA Rail Properties, including, without limitation, any loss, damage, destruction, injury or death of or to the MBTA’s contractors, agents or employees, Commuter Rail Passengers, Other Invitees, trespassers on or about the MBTA Rail Properties and/or any other person on, about or crossing the MBTA Rail Properties at highway or roadway crossings or elsewhere by automobile, truck, foot or otherwise, then any and all liability, cost and expense for the loss, damage, destruction, injury or death so occurring shall be borne entirely by the MBTA.

(b) The Parties specifically acknowledge and agree that, in the event of accidents directly between the trains, locomotives, rail cars or rail equipment of the MBTA and



CSXT only (“Covered Accidents,” and individually a “Covered Accident”), the MBTA shall have no duty to indemnify or hold harmless CSXT from the first seven million five hundred thousand dollars (\$7,500,000) in damages or expenses (aggregate per occurrence):

(1) caused by or arising from the willful misconduct of CSXT or its subsidiaries, its agents, licensees, employees, officers or directors: or

(2) resulting from an award of punitive or exemplary damages caused by the conduct of CSXT or its subsidiaries, its officers, employees or agents, licensees or subcontractors;

provided, however that, except as otherwise expressly provided by Section 10.4(c), MBTA shall indemnify and hold harmless CSXT from all damages and expenses above the amount referred to in the introductory paragraph of this Section 10.3(b) above, regardless of the basis of such claims or occurrences, including willful misconduct or punitive or exemplary damages. If the MBTA incurs any damages, fees, costs, or expenses in connection with a claim relating to a Covered Accident that is found to have been caused by or have arisen from the willful misconduct of CSXT or its subsidiaries, its agents, licensees, employees, officers or directors, or to have given rise to an award of punitive or exemplary damages caused by the conduct of CSXT or its subsidiaries, its agents, licensees, employees, officers or directors, CSXT shall reimburse the MBTA for all damages, fees, costs and expenses, up to a maximum of seven million five hundred thousand dollars (\$7,500,000) aggregate per occurrence, incurred in the defense or settlement (provided that such settlement has been approved in writing by CSXT) of such a claim, action or demand, which amounts shall count toward CSXT’s maximum responsibility under this Section 10.3(b).

#### 10.4 Certain Allocations of Responsibility

The following provisions shall govern the liability, cost and expense and the responsibility of the parties hereto, as between themselves, therefor arising out of, resulting from or connected with the movement of trains, locomotives, rail cars and rail equipment on the MBTA Rail Properties (without limiting the application of this Section 10.4 to any other incident or occurrence, for the avoidance of doubt, an occurrence involving a train, locomotive, rail car or rail equipment of or in the account of either Party on one hand, and on the other hand, either (i) a third party at a highway or grade crossing of the MBTA Rail Properties or (ii) a trespasser, shall be governed by paragraph 10.4(a) or 10.4(b), as applicable.)

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Commuter Rail Passengers or Other Invitees or trespassers), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only MBTA being involved, then MBTA shall assume all liability therefor, and bear all cost and expense in connection therewith, including, without limitation, all cost and expense referred to in Section 17.5 hereof.

(b) Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only CSXT being involved, then

(except for the liability, cost and expense for loss, damage, injury or death to Commuter Rail Passengers or Other Invitees, the liability, cost and expense for which will be solely assumed by MBTA as aforesaid in paragraph 10.3(a)), CSXT shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation, all cost and expense referred to in Section 17.5 hereof.

(c) Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Commuter Rail Passengers or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, both MBTA and CSXT being involved, then: (1) MBTA and CSXT shall separately assume and bear all liability, cost and expense for loss of, damage to or destruction of trains, locomotives, rail cars (including, without limitation, lading) and rail equipment operated by each of them (it being agreed that the Operating Contractor's operation of any of the foregoing shall be deemed to be the MBTA's operation thereof); (2) MBTA shall assume and bear all liability, cost and expense for injury to and death of Commuter Rail Passengers, Other Invitees and MBTA's officers, agents, contractors and employees except as set forth in paragraph 10.3(b); (3) CSXT shall assume and bear all liability, cost and expense for injury to and death of CSXT's officers, agents, contractors and employees; and (4) MBTA and CSXT shall equally assume and bear all liability, cost and expense for injury to or death of any person (including, without limitation, trespassers) not referenced in paragraph 10.4(c)(2) or 10.4(c)(3) and for loss of, damage to and destruction of all other property not referenced in paragraph 10.4(c)(1) so occurring, including, without limitation, all cost and expense referred to in Section 17.5 hereof, provided, however, that this paragraph 10.4(c)(4) shall be ineffective and shall not apply to any injury to or death of any person or persons on or about the MBTA Rail Properties in connection with, arising from or related to, Intercity Rail Passenger Service, including, without limitation, passengers and any person or persons aboard, waiting for, boarding or alighting from trains operated by Amtrak (including, without limitation, any person or persons assisting or accompanying any of the foregoing passengers or persons).

(d) Except as provided in paragraph 10.4(e) below, whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Commuter Rail Passengers, Other Invitees or trespassers), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, both CSXT and any railroad other than MBTA using the MBTA Rail Properties being involved (including, without limitation, Amtrak and/or any detouring railroad), then the provisions of paragraph 10.4(c) above shall apply for the purpose of determining between MBTA and CSXT, CSXT's assumption and apportionment of liability, cost and expense.

(e) Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers, Other Invitees or trespassers), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, MBTA, CSXT and any other railroad (including, without limitation, Amtrak and/or a detouring railroad) using the MBTA Rail Properties being involved, then the provisions of paragraph 10.4(c) above shall apply for the purpose of determining between MBTA and CSXT, each Party's assumption and apportionment of liability, cost, and expense, provided however that CSXT's share of that liability, cost and expense that is to be borne equally by MBTA and CSXT under paragraph 10.4(c)(4) above, shall

be reduced from one-half (1/2) to one-third (1/3) of such liability, cost and expense in the event that such other railroad bears and pays to MBTA one-third (1/3) or more of the aforesaid liability, cost and expense.

(f) Notwithstanding any other provision of this Agreement to the contrary, for the purposes of this Section 10.4, the term "rail equipment" shall mean and be confined to maintenance of way and work train equipment and other vehicles and machinery (such as hi-rail trucks) which are designed for operation on and are being operated on railroad tracks on the MBTA Rail Properties at the time of any occurrence under said Section 9.4.

(g) For purposes of this Section 10.4, pilots furnished by MBTA to CSXT pursuant to paragraph 17.3(c) of this Agreement shall be considered as the employees of CSXT.

(h) For purposes of this Section 10.4, the term "person" shall include, without limitation, the employee(s) of a Party hereto and the term "employee(s)" shall mean and include: (i) employees of a Party hereto; (ii) for each Party hereto, the invitee(s) to the MBTA Rail Properties of each such Party, which shall include the employees of contractors and subcontractors of such Party, excluding Commuter Rail Passengers and Other Invitees.

#### 10.5 Installment Payments

In every case of death or injury suffered by an employee of either MBTA or CSXT, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the assignment, expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

#### 10.6 Validity

Each provision of this Section 10 shall be interpreted so as to be effective and valid. In the event, however, that any provision of this Section 10 shall, for any reason, be held invalid, illegal or unenforceable in any respect, then this Section 10 shall be construed as if such provision had never been contained herein in order to effect to the fullest extent the purposes of this Section 10 and the intentions of the parties with respect thereto.

#### 10.7 No Third Party Beneficiaries, Other Remedies

Nothing expressed or implied in this Section 10, including, without limitation, paragraphs 10.4(e) and (f) hereof is intended to or shall be construed to: (A) confer upon or to give any person, firm, partnership, corporation or governmental entity other than the parties hereto, their respective legal representatives, successors or assigns any right or benefit under or by reason of this Section 10, or (B) limit or restrict either party hereto from seeking damages, redress or other relief from any person, firm, partnership, corporation or governmental entity other than the parties hereto, their respective legal representatives, successors or assigns.

## **10.8 Investigations**

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the Party bearing the liability, cost and expense therefor under the provisions of this Agreement. For avoidance of doubt, the Parties agree that the MBTA shall have the obligation to investigate any and all such claims, injuries, deaths, property damages and losses involving Commuter Rail Passengers or Other Invitees, notwithstanding CSXT's potential liability pursuant to paragraph 10.3(b).

(b) CSXT will investigate, adjust and defend all freight loss and damage claims filed with it in accordance with applicable provisions of law and all claims, injuries and deaths of CSXT's employees, for which either CSXT or MBTA solely or CSXT and MBTA jointly may have any liability under the provisions of this Agreement.

(c) The Party hereto receiving notice of the filing of a claim will promptly notify the other Party of such filing where liability therefor may be joint or that of the other Party hereto. MBTA and CSXT will cooperate with each other in all such investigations, adjustments, and defenses, and MBTA and CSXT will provide each other, upon request therefor, a copy of all documents and written communications and produce witnesses, experts or exhibits in their employment or control to assist in the preparation and defense of any such claim and/or litigation with respect thereto.

(d) In the event a claim or suit is asserted against any Party which is another's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other Party shall, upon request, take over the investigation, adjustment and defense of such claim or suit, and the Party relieved of duties in respect of such claim or suit shall cooperate as requested by the Party investigating, adjusting or defending said claim or suit.

(e) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement.

(f) CSXT shall not settle or compromise any claim, demand, suit or cause of action of any CSXT employee for which MBTA has any liability under this Agreement without the concurrence of MBTA if the consideration for such settlement or compromise exceeds Fifty Thousand and no/100 Dollars (\$50,000.00).

(g) It is understood that nothing in this Section 10.9 shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 10 or elsewhere in this Agreement.

## **10.9 Corrective Amendments**

The Parties acknowledge and agree that the allocation of liability and other provisions of this Section 10 were a material inducement to both Parties' agreement to enter into this Agreement and that in the event that as a result of legislative action, court decision, regulation or otherwise, said allocations of liability and/or the other provisions of this Section 10 are found to

be, or become unenforceable or modified in any manner that would affect the substantive rights of either Party, the Parties shall promptly negotiate such amendments to this Agreement as are mutually satisfactory and necessary to protect the intent of this Section 10. If the statutory modification, court decision, regulation or other event substantially impairs either Party's liability indemnification protection under this Section 10 or the availability of any of the insurance described in Section 11 below, and the Parties cannot reach agreement on a satisfactory amendment to eliminate such substantive impairment within 30 days from the date of said statutory modification, court decision, regulation or other event becomes effective, then, notwithstanding the provisions of paragraph 13.4 (b) hereof, the Parties shall submit the matter to binding arbitration for the establishment of such an amendment to this Agreement in accordance with paragraph 13.4(a) hereof.

## **SECTION 11. INSURANCE**

### **11.1 General**

(a) MBTA has purchased insurance (the "Current Insurance Policy"), which Current Insurance Policy includes coverage for punitive and exemplary damages, and has established and shall maintain an adequate program of self-insurance which will cover claims and liabilities for loss, damage, injury or death arising out of or connected with this Agreement, including, without limitation, MBTA's contractual liabilities under this Agreement, in the amounts and as provided for in paragraph 11.1(b) hereof. The obtaining of such policy of insurance and the establishment of said self-insurance program, and the maintenance of both in full force and effect by MBTA is a material obligation of this Agreement. The MBTA shall use its commercially reasonable efforts to continue to retain the Current Insurance Policy in effect (including, without limitation, its coverage for punitive and exemplary damages). In the event said Current Insurance Policy, or any replacement insurance policy is canceled for any reason, then MBTA shall replace said policy during the notification period with another policy in like amount and coverage protection (except that MBTA's failure to obtain coverage in such replacement policy for punitive and exemplary damages shall not be a breach of the foregoing requirement in the event that the MBTA has used and continues to use on an on-going basis, commercially reasonable efforts to obtain such coverage) or, in the case of the self-insurance program, the MBTA shall re-establish such program, and, should the MBTA fail in its performance of these contractual obligations to CSXT, then MBTA shall immediately cease operation of any and all MBTA Commuter Rail Service on the Joint Usage Rail Properties until such time, if any, that MBTA shall obtain and thereafter maintain insurance in like amount and coverage protection to that described in this Section 11 and/or re-establish the self-insurance program, as the case may be. It is understood and agreed by the parties hereto that the limitation of MBTA's Commuter Rail Services on the Joint Usage Rail Properties, as aforesaid, shall not in any manner modify, amend, limit or restrict the CSXT Easement or CSXT's rights hereunder with respect to the provision of CSXT Rail Services, and shall not modify or amend any other obligation of MBTA under this Agreement.

(b) MBTA, at its sole cost and expense, shall procure and shall maintain during the entire term of this Agreement, liability insurance covering CSXT as an additional named insured as agreed and provided in the terms and conditions of paragraph 11.1(a) hereof. The said liability insurance shall have a limit of not less than the Required Insurance Amount

combined single limit for personal injury and property damage per occurrence, with deductibles or self-assumed amounts not in excess of Seven Million Five Hundred Thousand and No/100 Dollars (\$7,500,000.00). The said liability coverage within its terms and conditions shall extend coverage to CSXT for third party personal injury and property damage. The said liability coverage shall provide employer's liability coverage to CSXT for liabilities incurred to employees involved with this Agreement under the Federal Employer's Liability Act. MBTA shall furnish to CSXT's insurance department, 500 Water Street, C-907, Jacksonville, FL 32202, a certified copy of the liability insurance policy for CSXT's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

(c) As of the date hereof, CSXT maintains system-wide insurance (which covers, inter alia, its CSXT Freight Rail Service on the MBTA Rail Properties) with a limit in excess of the Required Insurance Amount and deductibles or self-assumed amounts of Twenty-five Million and No/100 Dollars (\$25,000,000.00). CSXT, at its sole cost and expense, shall maintain such insurance with limits not less than the Required Insurance Amount during the entire term of this Agreement, and shall name the MBTA and its Operating Contractor as additional insureds. In the event that CSXT assigns this Agreement pursuant to the provisions of Section 17 hereof to any person, firm, partnership or corporation that is not affiliated with CSXT, then: first, the figure in the definition of Required Insurance Amount as applied to the insurance required of MBTA under subparagraphs (a) and (b) hereof may, at MBTA's option, be reduced to a figure of Thirty Million Dollars (\$30,000,000), and, second, as a condition to the conduct of operations by such person, firm, partnership or corporation on the MBTA Rail Properties, MBTA may not require such entity to maintain during the remainder of the term of this Agreement insurance having a limit in excess of Thirty Million Dollars (\$30,000,000) combined single limit for personal injury and property damage per occurrence, with deductibles or self-assumed amounts not in excess of Two Million Dollars (\$2,000,000). To the extent and in the event mutually agreeable to MBTA and such other entity, the aforesaid limits and/or amounts of insurance required of MBTA and such other entity may be changed from time to time during the term of this Agreement.

## 11.2 Period of Coverage

Each Party's responsibility under this Section shall apply to any liability arising on or after the Effective Date of this Agreement, and shall extend beyond the date of expiration or termination of this Agreement with respect to any event occurring or liability arising during the term of this Agreement (or interim period described in Section 7 above).

## 11.3 Certificates

Each Party shall furnish the other with Certificates of Insurance (and, upon request, copies of all required insurance policies, including endorsements and declarations) evidencing compliance with the requirements set forth in this Section on the Effective Date of this Agreement, and upon the request of the other party, annually thereafter. The policies shall be endorsed to (1) provide that the policy shall not be cancelled or coverage reduced without sixty (60) days prior notice of cancellation or reduction to the other party, and (2) name the other party (the MBTA and/or its Operating Contractor or CSXT, as the case may be), and its directors, officers, agents and employees, as additional insureds with respect to occurrences relating to the

performance of the obligations set forth in this Agreement; (3) provide that such coverage is primary and non-contributory to any insurance or self-insurance procured and maintained by the other party; (4) provide that any Workers' Compensation policies contain a waiver of subrogation against the other party; and (5) provide that to the extent reasonably available, all policies shall not contain any terrorism exclusions, or if they so contain such exclusions, shall contain endorsements providing coverage for acts of terrorism, both foreign and domestic, and both certified and non-certified by the Secretary of the Treasury of the United States. In the event any insurance policy required under this Agreement is cancelled or has its aggregate limits coverage reduced by 25% or more, then the MBTA and/or its Operating Contractor or CSXT (as the case may be) shall replace such policy or reinstate the aggregate limits during the notification period referred to above with another policy in like amount and coverage protection.

#### **11.4 Self-insurance**

Each party's self-insurance programs and insurance policies with self-insured retentions must provide at least the same protection from liability and defense of suits as would be afforded by "first dollar" insurance. If either party fails or refuses to pay any losses within a permitted self-insured retention, such failure or refusal shall be an Event of Default under this Agreement.

### **SECTION 12. DEFAULT AND BREACH; TERMINATION**

#### **12.1 Default and Breach**

In the event of a default or breach by either party hereto of any of its obligations under this Agreement, the party in default or breach shall cure such default or breach within sixty (60) days of notice to it from the other party of such default or breach; provided, however, that, except as may be otherwise expressly provided in this Agreement, the party in default or breach, shall be responsible for any and all liability, cost and expense arising out of or connected with such default or breach during the period of such cure; and provided, further, that nothing contained in this Section 12 shall be construed to modify or amend the provisions of Section 12 hereof or to limit or restrict either party's rights thereunder.

The Parties hereto expressly acknowledge that the nature and purpose of this Agreement is such that damages may not be an adequate remedy for any default or breach so occurring; including, without limitation, any breach with respect to a party's operating windows under paragraph 2.2(b) of this Agreement, and that equitable relief, such as injunction, mandatory or otherwise, including specific performance, may be necessary in the event a party fails to cure a breach or default so occurring; in such case, the aggrieved party may take such legal action as it deems appropriate and may file immediately any and all pleadings in any state or federal court in Massachusetts to secure an injunction of the action or inaction resulting in such default or breach, pending resolution of the matter pursuant to the dispute resolution procedures set forth in Section 13 below; and that, except with respect to the seeking of such equitable relief, any and all controversies arising out of or connected with any default or breach so occurring shall be resolved exclusively by dispute resolution and arbitration in accordance with the provisions of Section 13 hereof. Nothing contained in this Section 12 shall be construed to limit or restrict the parties' rights and obligations under Section 12.2 hereof.

## **12.2 Termination; Effect of Termination**

(a) This Agreement may be terminated by mutual agreement of the Parties, upon such terms and conditions as the Parties may mutually agree to. Such termination shall be effective in accordance with a written agreement by the Parties. Termination under this section shall not constitute a waiver of the rights of either Party to damages or other remedies related to this Agreement, except to the extent that the mutual agreement terminating this Agreement so specifies. The Parties agree and acknowledge that any termination of this Agreement does not affect the validity, continuation or perpetual nature of the CSXT Easement with regard to the MBTA Rail Properties.

(b) This Agreement shall terminate with respect to portions of the MBTA Rail Properties (i) at such time as CSXT or its successors or assigns, secures and exercises Appropriate Statutory and Regulatory Authority to abandon and/or discontinue all CSXT Freight Rail Service on such portions of the MBTA Rail Properties, or (ii) in the event that such authority is not required, at such time as CSXT, its successors or assigns, designates in a written notice of termination of this Agreement with respect to such portions of the MBTA Rail Properties, which written notice shall be given to the MBTA at least six (6) months in advance of the date so designated for termination., provided, however, such portions of the MBTA Rail Properties shall continue to be subject to the rights of Amtrak under the Amtrak Agreement (if then in effect) and applicable law and the provisions of Article 8 and all other provisions hereof that are necessary for the provision of Amtrak service on the MBTA Rail Properties shall survive any such termination of this Agreement.

(c) Expiration or termination of this Agreement for any reason, in whole or in part, shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the expiration or termination hereof. The foregoing provision shall apply whether or not it is so expressly stated elsewhere in this Agreement, including without limitation, where a right of termination, in whole or in part, is expressly accorded either or both of the parties hereto.

## **SECTION 13. DISPUTE RESOLUTION**

### **13.1 Settlement of Disputes.**

Both Parties to this Agreement shall make every reasonable effort to settle any dispute concerning the interpretation, application or enforcement of this Agreement by prompt and diligent discussions and negotiations.

### **13.2 Informal Consideration by the Parties.**

Any dispute that cannot be resolved pursuant to Section 13.1 above within thirty (30) business days after it arises (or such other time as the Parties may agree in writing), may be submitted at the written request of either party to the MBTA's Director of Railroad Operations and the individual designated by CSXT. These individuals shall discuss and attempt to resolve the dispute. In the event that the dispute remains unresolved twenty (20) business days after its submission (or such other time as the parties may agree), the matter may be referred in writing



by either party to the General Manager of the MBTA and CSXT's Assistant Vice President - Network Planning and Joint Facilities (the "AVP") for consideration and resolution. If the dispute still remains unresolved thirty (30) calendar days after its referral to the General Manager and the AVP under this paragraph, the Parties may jointly agree to submit the matter to mediation under Section 13.3, below, or either party may commence arbitration in accordance with Section 13.4 below.

### **13.3 Mediation.**

(a) Either the MBTA or CSXT may request mediation of any unresolved dispute under this Section 13.3. If a party elects mediation and the other party declines to have the dispute resolved by mediation under this Section, or if the Parties undertake mediation and one of the Parties unreasonably delays the expeditious conclusion of same, the aggrieved party may proceed with other remedies available under this Agreement.

(b) The MBTA and CSXT shall jointly select an independent mediator within twenty-one (21) calendar days after the submittal of a dispute under this Section 13.3. The independent mediator shall be properly qualified in the areas of surface transportation finance and the surface transportation industry, and have experience in the analysis of transportation operating and capital costs and revenues.

(c) The mediator shall meet with the Parties within twenty-one (21) days after his or her selection to attempt to mediate and resolve the dispute. If mediation efforts are unsuccessful after sixty (60) calendar days, the mediator shall, after consideration of the Parties' positions and written submissions (if so requested) issue written recommendations for resolution of the dispute. All meetings and proceedings shall be held in Boston, Massachusetts, at a time and location acceptable to both Parties.

(d) During the pendency of such mediation proceedings, the performance by both Parties of this Agreement shall continue in the same manner as before such controversy arose, unless the mediator shall make a preliminary ruling to the contrary.

(e) Each party hereto shall share equally the costs and expenses of any mediation conducted pursuant to this Section.

### **13.4 Arbitration.**

It is the desire and intent of the Parties hereto to avoid the expense and delay inherent in litigation; therefore, CSXT and MBTA agree that whenever a Party desires to commence the arbitration process it shall provide written notice thereof to the other Party and the following provisions shall apply:

(a) Except as is otherwise expressly provided in this Agreement, any dispute (including, without limitation, disputes regarding whether a matter is subject to arbitration under this Agreement) under this Agreement shall be settled exclusively in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award entered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration shall be held in Boston, Massachusetts. It is the intent of the Parties hereto that the

agreement to arbitrate contained in this Section shall be valid and irrevocable, and shall be specifically enforceable by either of the Parties hereto from and after the date of this Agreement. In interpreting this Agreement and resolving any dispute hereunder, the arbitrator(s) shall apply the laws of the Commonwealth of Massachusetts. In the event of Arbitration, each Party shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs, fees and expenses of the arbitrator(s) and the American Arbitration Association shall be paid equally by the Parties.

(b) The Parties agree that neither the provisions of paragraph 13.4(a) nor Section 13.3 shall be applicable to, nor shall they be used: (i) to alter, amend, change, modify, add to or subtract from any of the provisions of this Agreement, except to the extent mutually agreed to by MBTA and CSXT in the submission of the matter to arbitration or mediation; (ii) to resolve any matter subject to the judgment or discretion of one Party to this Agreement; or (iii) except as is otherwise expressly provided herein, to resolve any matter reserved by this Agreement for the mutual agreement of the Parties.

(c) Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when commencement of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

#### **13.5 Interest.**

Where the time period during which interest accrues regarding a matter in dispute is specifically established elsewhere in this Agreement, that time period shall apply for purposes of disputes governed by this Section. For any other dispute under this Agreement, interest shall accrue from the date that payment was due, at the Effective Interest Rate.

### **SECTION 14. EQUAL EMPLOYMENT OPPORTUNITY**

#### **14.1 Fair Employment Practices.**

CSXT agrees that it will comply with all applicable federal, state, and local laws and regulations relating to fair employment practices and non-discrimination against employees or applicants for employment because of race, religion, creed, color, sex, national origin, disability or sexual orientation.

#### **14.2 Subcontracts.**

CSXT shall insert provisions similar to those appearing in Section 14.1 above in each subcontract, except subcontracts for standard commercial supplies, raw materials, or construction.

### **SECTION 15. DISADVANTAGED BUSINESS ENTERPRISES.**

CSXT shall comply with all applicable federal laws and regulations relating to Disadvantaged Business Enterprises, including but not limited to regulations issued by the U.S. Department of Transportation (49 C.F.R. Part 23).

## **SECTION 16.           APPLICABILITY**

The Parties agree that this Agreement, on and as of the Effective Date hereof, shall supersede, only with respect to the MBTA Rail Properties governed by this Agreement on and after the Effective Date, as listed on Exhibit A, all previous agreements between the Parties that relate to such MBTA Rail Properties described in this Agreement. All previous agreements shall, however, remain in full force and effect with respect to (i) property not described in this Agreement and (ii) property described in this Agreement, but with respect to which the Effective Date has not occurred.

## **SECTION 17.           GENERAL PROVISIONS**

### **17.1   Additional Properties**

The Parties may by mutual written agreement add additional segments of railroad and track to the MBTA Rail Properties as defined herein (and designate an Effective Date with respect thereto).

### **17.2   Ownership of Service Equipment**

As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the Parties hereto such expression means the trains, locomotives, cars or equipment in the possession of or operated by or on behalf of one of the Parties and including such trains, locomotives, cars or equipment which are owned by, leased to, or the responsibility of such party.

### **17.3   Compliance with Laws and Operating Rules**

(a) CSXT and the MBTA shall comply with the provisions of applicable federal, state, and local laws, regulations, and rules respecting the operation, condition, inspection, and safety of the trains, locomotives, cars and equipment it or any affiliate or contractor operates over the MBTA Rail Properties. Each party shall indemnify, protect, defend, and save the other, and its officers, agents, and employees harmless from all fines and penalties imposed under such laws, rules, and regulations by any governmental or regulatory agency, or court having jurisdiction over the premises, when the imposition of same is related to the failure of a party to comply with its obligations under this paragraph 17.3(a). Nothing in this Section 17.3 shall alter, modify or amend Section 9 of this Agreement.

(b) In its use of the MBTA Rail Properties, CSXT shall comply in all respects with the operating rules and regulations of the MBTA, and the movement of CSXT's trains, locomotives, cars, and equipment over the Rail Properties shall be subject at all times to the orders of transportation officers of the MBTA.

(c) CSXT shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the MBTA Rail Properties, and MBTA shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the MBTA Rail Properties. All of CSXT's and MBTA's employees who shall operate trains, locomotives, rail cars and rail equipment over the MBTA Rail Properties shall be qualified by the MBTA for operation thereover. CSXT shall compensate the MBTA for any and all direct costs incurred by the MBTA in connection with the qualification of such employees of CSXT as well as the cost incurred by MBTA for furnishing pilots, until such time as such employees of CSXT are deemed by the appropriate examining officer of the MBTA to be properly qualified for operation as herein contemplated, provided that the MBTA shall not be required to administer more than three (3) qualifying attempts for any such employee. As used in this Section, qualification pertains only to the employee's operation of trains, locomotives, rail cars and rail equipment on the MBTA Rail Properties in accordance with the MBTA's operating rules and practices. For purposes of this Section, any employee of CSXT qualified to operate over the MBTA Rail Properties on a date prior to the Effective Date shall be deemed qualified by the MBTA for operation over MBTA Rail Properties as herein contemplated as of the Effective Date. On a date prior to the Effective Date, CSXT shall provide to MBTA a list of the names of all CSXT employees that CSXT certifies to be qualified to operate over the MBTA Rail Properties as of that date.

(d) CSXT shall be wholly responsible for administering and implementing all disciplinary proceedings involving CSXT employees. If a CSXT employee working on MBTA Rail Properties is alleged to have violated any safety rules, operating rules, regulations, orders, practices, or instructions, CSXT shall conduct an investigation. If the charges are sustained, CSXT shall assess disciplinary measures. The MBTA or the Commuter Rail Operator may notify a CSXT transportation officer of any possible violations of safety rules, operating rules, regulations, orders, practices, or instructions, in which case CSXT shall investigate the possible violations. Neither the MBTA nor the Commuter Rail Operator shall conduct any disciplinary proceeding against an employee of CSXT, although employees of the MBTA or the Commuter Rail Operator may provide testimony during a CSXT-conducted investigation.

#### 17.4 Access to MBTA Rail Properties

The MBTA, as the Owner of the MBTA Rail Properties, may exclude any person from the MBTA Rail Properties under the following circumstances:

(a) The MBTA may ban any person from the MBTA Rail Properties, provided such person is not a CSXT officer, in response to a serious violation of, or credible report of a serious violation of, MBTA operating rules, of Rule G, or of material dishonesty or insubordination if, in the opinion of the MBTA, such person is a danger to the safe operation, or may adversely affect the efficient operation, of the MBTA Passenger Rail Service. If the person is a CSXT employee the MBTA shall notify a CSXT Transportation Officer of any such incidents or suspected incidents, and of the MBTA's decision to ban any such employee from entering upon the MBTA Rail Properties pending further investigation by CSXT. CSXT shall promptly remove the CSXT employee from any service on the MBTA Rail Properties until such time as CSXT has completed its investigation of the matter, as described in paragraph 17.3(d).

(b) The CSXT employee will be allowed to re-enter the MBTA Rail Properties, if and when the employee returns to service for CSXT in accordance with discipline, if any, imposed by CSXT or the final result of any appeal of such discipline by the employee, except as provided in the next sentence. If the MBTA believes that the seriousness of the violation in question was not properly addressed due to a procedural error (by way of example only, but without limitation, dismissal of disciplinary charges due to failure of CSXT to provide adequate notice), the MBTA may continue to ban such employee from entering the MBTA Rail Properties. In case of such continued ban, the matter may be referred in writing by either party to the General Manager of the MBTA and CSXT's AVP for consideration and resolution. If the matter remains unresolved, then either party may submit the matter of the continued ban for resolution pursuant to the dispute resolution procedures set forth in Section 13.

(c) In the event that a person files a claim against the MBTA in connection with any action taken by the MBTA pursuant to this Section 17.4, and a court of competent jurisdiction determines that the MBTA acted in violation of law in directing such action, the MBTA shall indemnify and hold CSXT harmless from and against any damages, fines, or penalties arising from such determination. In the event CSXT receives notice that a CSXT employee has filed such a claim against the MBTA, CSXT shall promptly notify the MBTA.

#### 17.5 Disabled Trains/Wreck Clearing.

(a) If by reason of any mechanical failure or any other cause not resulting from an accident or derailment, a train or locomotive of CSXT becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by the MBTA on the Joint Usage Properties, or if in emergencies crippled or otherwise defective cars are separated from CSXT's trains on the Joint Usage Properties, the MBTA shall have the option of allowing CSXT to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Joint Usage Properties, or the MBTA may perform or arrange for the performance of the necessary functions. CSXT shall reimburse the MBTA for direct costs incurred in rendering any such assistance.

(b) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Joint Usage Properties, such work shall, at the option of the MBTA, be done by the CSXT or the MBTA or by the parties' respective contractors. CSXT shall reimburse the MBTA for direct costs incurred in rendering any such assistance.

(c) On the MBTA Rail Properties, each Party shall have full responsibility for rerailling wrecking service or wrecking train service, including without limitation the removal of damaged equipment, repair and restoration of road bed, track, signals, communication systems and all other right of way structures and facilities affected by such wrecks ("Wreck Clearing") on that portion of the MBTA Rail Properties it has responsibility to maintain. The liability, cost and expense of the foregoing, including, without limitation, loss of, damage to or destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be allocated and apportioned in accordance with the provisions of Section 10 hereof. All trains, locomotives, rail cars, and rail equipment and salvage from the same so picked up and removed which is owned by CSXT shall be promptly delivered to it. Each Party

shall perform its services under this Section in an expeditious manner in order to restore rail service on the line.

#### **17.6 Operating Duties in Regard to Safety.**

Each Party shall take all reasonable safety precautions and shall provide all reasonable protection to prevent damage, injury, death, or loss to: all employees and passengers of the other Party and all tracks, bridges, culverts and other equipment related to the MBTA Rail Properties. Unless otherwise provided by law, each Party will be responsible to give all notices and comply with all applicable laws, rules, regulations and lawful orders of any public agency or MBTA in connection with its operations under this agreement bearing on the safety of persons or property or their protection from damage, injury, death or loss. Without limitation, this obligation shall include observance of all safety rules and regulations administered by the FRA or Massachusetts Department of Public Utilities including, for example: the FRA's regulations at 49 CFR Subtitle B, Chapter II; all applicable regulations regarding the transport of hazardous materials or wastes prescribed by the U.S. Department of Transportation including 49 CFR Parts 171 et seq., and prescribed by the U.S. Environmental Protection Agency, including 40 CFR Part 263; and all safety rules and other operating procedures of general applicability and future effect issued by MBTA and forwarded in writing to CSXT. Each Party shall promptly furnish to the other Party evidence reasonably satisfactory to such other Party demonstrating compliance with the above. Nothing in this Section 17.6 shall alter, modify or amend Section 10 of this Agreement.

### **SECTION 18. ASSIGNMENT**

(a) CSXT may assign to any Person, in whole or in part, any of its rights, interests or obligations under this Agreement, subject to the following conditions: (i) that CSXT shall provide to the MBTA sixty (60) days prior written notice of such proposed assignment, (ii) that any such assignment must be accompanied by an assignment to such Person of the related portion of the CSXT Easement, (iii) that any such assignment of the CSXT Easement shall comply with Section 2.4.1 of the Definitive Agreement, and (iv) that the assignee assume the rights, interests or obligation assigned. The Parties acknowledge and agree that notwithstanding any fee that may be due from CSXT to the Commonwealth of Massachusetts pursuant to Section 2.4.1.1(a) of the Definitive Agreement, with respect to any such assignment of all or a portion of the CSXT Easement, no fees or other amounts shall be due or payable under this Agreement with respect to any such assignment of the CSXT Easement or this Agreement. In the event of an assignment of this Agreement by CSXT to an affiliate of CSXT, CSXT shall unconditionally guarantee to the MBTA the performance of all obligations of CSXT under this Agreement by any such affiliate.

(b) Except as is otherwise provided in subparagraph (d) hereof, any assignment of this Agreement, in whole or in part, by CSXT, its successors or assigns, shall release and discharge CSXT: (i) from the performance of its obligations and covenants under this Agreement, or with respect to the part hereof so assigned, as the case may be, from and after the date of such assignment, and (ii) from any liability, cost and expense arising out of or connected with this Agreement, or with respect to the part thereof so assigned, as the case may be, from and after the date of such assignment.

(c) MBTA may assign, in whole or in part, any of its rights, interests or obligations under this Agreement, *provided however*, that MBTA shall provide to CSXT sixty (60) days prior written notice of such proposed assignment, and *provided further*, that such assignment does not in any way impair or adversely affect the rights of CSXT hereunder or the rights of Amtrak under any agreement between Amtrak and CSXT or as required by law.

(d) Assignment of this Agreement, in whole or in part, shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to the assignment hereof. The foregoing provision shall apply whether or not it is so expressly stated elsewhere in this Agreement where a right of assignment, in whole or in part, is expressly accorded either or both Parties.

## **SECTION 19. FORCE MAJEURE**

Each party will be excused from performance of any of its obligations to the other under this Agreement, where such non-performance is occasioned by any event beyond the non-performing party's control which shall include, without limitation, any order, rule, or regulation of any Federal, State, or local government body, agent, or instrumentality; work stoppage; natural disaster; terrorist act or threatened act of terrorism; or civil disorder; provided, however, that the party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy, or remove such event in the shortest practical time.

## **SECTION 20. MISCELLANEOUS**

(a) This Agreement, and the transactions to which it relates, will be governed by and construed and enforced in accordance with the law of the Commonwealth of Massachusetts. Any claim or legal action by one party against the other shall be commenced and maintained in any state or federal court located in Massachusetts and both Parties hereby submit to the jurisdiction and venue of any such court.

(b) This Agreement, including the Exhibits hereto, represents the entire agreement between the Parties hereto with respect to the MBTA Rail Properties from and after the Effective Date with respect to such MBTA Rail Properties, and this Agreement supersedes any and all prior discussions, proposals and communications between the MBTA and CSXT with respect to such MBTA Rail Properties.

(c) All notices pursuant to this Agreement shall be in writing and shall be deemed effective: (i) on the date given if delivered by hand or transmitted by facsimile on a weekday, or on the next succeeding weekday if not given on a weekday, (ii) one weekday after delivery to a reputable overnight courier service, and (iii) five days after having been deposited with the U.S. Postal Service, postage prepaid.

Notices to the MBTA shall be addressed to:

Director of Railroad Operations  
Massachusetts Bay Transportation Authority  
45 High Street, 9th Floor  
Boston, MA 02110

Notices to CSXT shall be addressed to:

If to CSXT, to:

Assistant Vice President of Network Planning  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202

with a copy to:

Peter J. Shudtz  
CSX Corporation  
Suite 560, National Place  
1331 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

(d) No failure on the part of either party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for by law.

(e) The indemnification obligations of CSXT and the MBTA hereunder (and all other obligations) that arise but which are not satisfied during the Term of this Agreement shall survive the termination of this Agreement.

(f) The section headings appearing herein are intended solely for convenience of reference and shall not be construed as affecting the interpretation of any provision hereof.

(g) This Agreement shall be binding upon, and inure to the benefit of the respective successors and assigns of the parties.

(h) Nothing in this Agreement shall be deemed to create any right in any Person not a party hereto other than permitted successors and assigns of a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

(i) The Parties represent and warrant to each other that, except with respect to a Labor Challenge, (i) the Parties have the power and authority to enter into this Agreement and



to carry out their respective obligations hereunder; (ii) the Parties have taken all legal action necessary to authorize them to enter into and perform their respective obligations hereunder; (iii) entering into and performing this Agreement does not violate any statute, rule, regulation, order, writ, injunction, or decree of any court, administrative agency or governmental body, or violate any contract or agreement by which either party hereto is bound; (iv) there is no known litigation or proceeding pending or threatened against a party, or any other action, which could materially or adversely affect the performance of this Agreement; and (v) the Parties have obtained all approvals as may be required to permit their respective performance of the obligations of this Agreement. Except as expressly provided herein, the Parties make no representations or warranties and waive no rights or remedies.

(j) No recourse shall be had by either party for any claim against any officer, director, stockholder, employee or agent of any other party alleging personal liability on the part of such Person with respect to performance of the MBTA's or CSXT's obligations under this Agreement.

(k) Both Parties shall maintain appropriate operating and accounting records which record the locomotives, cars, weight and mileage of same moved by CSXT over MBTA Rail Properties. Either Party shall have the right, upon reasonable notice, to inspect, examine and audit during normal business hours all operating and accounting records and supporting documents of the other party, including, without limitation, dispatching records, and all other books and records that relate to the performance of this Agreement. Nothing in this Agreement shall be construed as obligating either party to retain books or records beyond the period specified in regulations of the STB, of the former Interstate Commerce Commission or of the Federal Railroad Administration.

(l) Any time limits specified under a provision of this Agreement may be suspended by mutual written agreement of the Parties.

(m) During the pendency of any dispute between the Parties, the business and the operations to be conducted under this Agreement, to the extent that they are the subject of any such dispute, shall continue to be transacted and used in the manner and form existing prior to the arising of any such controversy.

(n) In the event of any conflict between the text of this Agreement and that of any Exhibit hereto, the text of this Agreement shall control except to the extent that this Agreement makes specific reference to a provision of any Exhibit as defining the obligations of a Party hereunder.

(o) In the event that any provision of this Agreement is found to be invalid or unenforceable in any respect, the remaining provisions shall nevertheless be binding with the same effect as if the invalid or unenforceable provision was originally deleted.

(p) This Agreement and the Exhibits hereto and thereto may be amended from time to time during the Term of this Agreement. Either the MBTA or CSXT may request in writing such amendments or modifications. However, no such amendments or modification shall

be effective unless evidenced by a written amendment to this Agreement executed by duly authorized representatives of both Parties hereto.

(q) This Agreement shall in no way be considered as establishing either a joint facility or a joint enterprise between the MBTA and CSXT.

(r) In the performance of work under this Agreement the Parties shall be deemed to be independent contractors and neither Party shall be deemed to be an agent of the other Party. Notwithstanding the foregoing, for purposes of Section 10 neither Party shall be deemed to be a “contractor” of the other Party.

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed the \_\_\_\_ day of November, 2009, in duplicate, each of which shall be considered an original.

**MASSACHUSETTS BAY TRANSPORTATION  
AUTHORITY**

By: \_\_\_\_\_

Name:

Title:

APPROVAL AS TO FORM

\_\_\_\_\_  
MBTA General Counsel

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_

Name: Steven Potter

Title: Assistant Vice President Network  
Planning and Joint Facilities

[Signature page to 2009 Operating Agreement between MBTA and CSXT]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed  
the \_\_\_\_ day of November, 2009, in duplicate, each of which shall be considered an original.

**MASSACHUSETTS BAY TRANSPORTATION  
AUTHORITY**

By: \_\_\_\_\_

Name: *William A. Mitchell*

Title: *ACTING GENERAL MANAGER*

APPROVAL AS TO FORM

*Gerald A. Healey*  
MBTA General Counsel  
*Acting*

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_

Name: Steven Potter

Title: Assistant Vice President Network  
Planning and Joint Facilities

[Signature page to 2009 Operating Agreement between MBTA and CSXT]

**EXHIBIT A****MBTA Rail Properties**

<b>RIGHT OF WAY</b>				<b>TYPE OF MBTA RAIL PROPERTY</b>
	<b>From</b>	<b>To</b>	<b>Miles</b>	
<b>BOSTON MAIN LINE</b>				
Framingham to Worcester	Mile post 22.40	Mile Post 44.00	21.60	Joint Usage Rail Properties
Framingham to Worcester	Mile post 44.00	Mile Post 44.30	00.30	Joint Usage Rail Properties <sup>1</sup>
<b>YARD LEAD TRACKS</b>				
Yard Lead Tracks at Framingham Yard (i.e., the tracks immediately parallel to the westbound Boston Main Line tracks)	Clearance point of the switch on the west end of such tracks	Home signal on east end of such tracks		Freight Only Rail Properties
Yard Lead Tracks at Westborough Yard (i.e., the tracks (including planned 7,500 foot extension) immediately parallel to the westbound Boston Main Line tracks)	Clearance point of the current switches	Current end of such tracks plus a planned 7,500 foot extension thereof		Freight Only Rail Properties
Yard Lead Tracks at Worcester Yard (i.e., the tracks immediately parallel to the eastbound Boston Main Line tracks)	Clearance point of the switch on the west end of such tracks	Clearance point of the switch on the east end of such tracks		Freight Only Rail Properties

<sup>1</sup> The Parties acknowledge that Track 1 and Track 2 are predominantly used for various freight purposes.

**EXHIBIT B**

**DEEDS**

**EXHIBIT C**

**MAINTENANCE SERVICES**

**[To be added]**

## **EXHIBIT D**

### **OPERATING PROCEDURE**

#### **HANDICAP PLATFORMS WITH RETRACTABLE EDGES**

When CSXT desires to move an excess dimension wide load over MBTA Rail Properties on which a handicap platform with a retractable edge (increases centerline track to edge of platform clearance from 5'7" to 7'3") is located, the following procedure will be strictly adhered to:

(a) CSXT will notify the MBTA trouble desk with the train number and time of movement, at least 24 hours in advance of the time the movement is scheduled to pass the retractable edge platform.

(b) Wide load movements will occur anytime except those time periods set forth in paragraph 0.

(c) MBTA maintenance forces will notify the MBTA Operating Contractor's Assistant Superintendent Transportation through the MBTA Operating Contractor's Chief Dispatcher that the handicap platform is out of service for all use. After information is acknowledged the MBTA forces will raise and lock the retractable platform edges. They will also notify the CSXT dispatcher that 7'3" clearance is available, specifying the day and time when available, which shall be no less than one (1) hour before the estimated time of arrival for the wide load movement.

(d) After passage of the wide load, MBTA forces will seek permission from the CSXT dispatcher to lower the retractable platform edge for normal 5'7" clearance.

(e) After receiving CSXT dispatcher direction, MBTA forces will lower and lock the retractable platform edges.

(f) MBTA forces will notify the CSXT Dispatcher that the platform edges are down and locked and will specify the date and time completed.

(g) MBTA forces will notify the MBTA Operating Contractor's Assistant Superintendent Transportation, through the MBTA Operating Contractor's Chief Dispatcher and the MBTA trouble desk that the handicap platform is back in service to accommodate physically challenged passengers.

(h) If MBTA fails to discharge its responsibilities as set forth above within 2 hours of the scheduled time referenced in paragraph (1) hereof, CSXT may, but shall not be required to, operate and restore the platform edge to permit passage of the excess dimension wide load, provided that prior to any operation of the platform edges, CSXT forces notify the MBTA trouble desk at. MBTA assumes responsibility for CSXT's direct labor expenses.



**EXHIBIT H**

**EXHIBIT H**

**DRAFT – SUBJECT TO FURTHER REVISION UPON FINALIZATION OF  
ALL REQUIRED AGREEMENTS**

This instrument prepared by  
or under the direction of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RELEASE DEED**

**THIS RELEASE DEED**, made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Grantor", and THE COMMONWEALTH OF MASSACHUSETTS, acting through the MASSACHUSETTS DEPARTMENT OF TRANSPORTATION, whose mailing address is \_\_\_\_\_, hereinafter called "Grantee,"

(Wherever used herein, the terms "Grantor" and "Grantee" may be construed in the singular or plural as the context may require or admit, and for purposes of exceptions, reservations and/or covenants, shall include the heirs, legal representatives and assigns of individuals or the successors and assigns of corporations or state agencies.)

**WITNESSETH:**

**WHEREAS**, Grantor has interests in (i) a line of railroad over which rail freight, commuter rail and intercity rail passenger service are presently conducted, consisting of (a) the Boston Terminal Running Track which is 1.10 miles from QBB 0.00 to QBB 1.10, and (b) the Grand Junction which is a total of 4.87 miles from OBG 0.00 to OBG 2.70 and from OBG 5.70 to OBG 7.87, and (ii) certain specified properties contiguous to such line; and

**WHEREAS**, pursuant to a certain Definitive Agreement dated as of October 10, 2008 between Grantee and Grantor, as amended (the "Definitive Agreement"), Grantee agreed to acquire Grantor's

**DRAFT**

interests in such properties and such line of railroad (as hereinafter more particularly described) for the purposes of accommodating public demand for commuter rail transportation, roadways and other public purposes including the continued provision of rail freight service by Grantor, intercity rail passenger service and commuter rail service; and

**WHEREAS**, the parties desire that Grantee acquire Grantor's interest in such properties and line of railroad and that Grantor retain, and not transfer to the Grantee, a perpetual easement in gross over a portion of such properties and line of railroad, limited for the purpose of the exclusive provision of rail freight service subject to the terms and conditions set forth herein and to the rights of the National Railroad Passenger Corporation ("Amtrak") under the Agreement dated June 1, 1999 and all supplements thereto permitted by the 1985 Operating Agreement (as hereinafter defined), such agreement and supplements being between Grantor and Amtrak or any replacement agreement described in Section 6 hereof provided such replacement agreement complies with the terms and conditions set forth in said Section 6 (collectively, the "Amtrak Agreement"), it being the intention of the parties that Grantor remain, and the Grantee not become, the rail carrier subject to the Interstate Commerce Act, as revised, the Railway Labor Act, as revised, or any other federal law relating to the provision of railroad transportation on such properties;

**WHEREAS**, this conveyance is made under threat of and in lieu of condemnation by Grantee of the real property of Grantor;

**NOW THEREFORE**, that Grantor, in consideration of the sum of Twenty-Nine Million Dollars (\$29,000,000.00) paid, does hereby grant to Grantee all right, title and interest of Grantor, if any, in and to those certain tracts or parcels of land situate, lying and being in the Suffolk County Massachusetts, more particularly described in **Exhibit A** attached hereto and incorporated herein (the "Land");

**BUT EXCLUDING** and excepting unto Grantee those parcels, rights and interests listed or shown on **Exhibit B** attached hereto and incorporated herein, as well as all privileges, hereditaments and appurtenances appertaining to any such parcels, rights and interests, and the rights and interests related to the CSXT Grand Junction/BTRT Easement (as hereinafter defined) (the "Excluded Property");

**TOGETHER WITH** all tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and other fixtures and improvements which are affixed as of the date hereof to the Land (other than any such property affixed to the Excluded Property) as well as all privileges, hereditaments and appurtenances appertaining to the Land or any of the foregoing (other than the Excluded Property) (the "Ancillary Property" and together with the Land, the "Property").

**THE PROPERTY IS CONVEYED EXPRESSLY SUBJECT TO:** (a) those rights, interests, contracts, agreements, leases, licenses and easements which are listed or described on **Exhibit C** attached hereto and incorporated hereof; (b) the rights of Amtrak under the Amtrak Agreement; (c) the CSXT Grand Junction/BTRT Easement (as hereinafter defined); (d) building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations, all as existing as of the Closing Date; (e) taxes, tax liens and assessments, both general and special, which are not yet due and payable but which may become due or payable on the Property on or after the Closing Date; (f) reservations or exceptions whether or not of record, including, without limitation, reservations or exceptions of minerals or mineral rights by third parties; public utility and other easements; and

easements, crossings, occupancies and rights-of-way, howsoever created, existing as of the Closing Date; (g) encroachments or any other state of facts existing as of the Closing Date which might be revealed from an accurate survey, title search or personal inspection of the Property; (h) the rights of others in existing roads, streets, ways, alleys and party walls; and (i) mortgage liens with banks or other institutional real estate lenders pertaining to the Property created by Grantor, for which Grantor will obtain payoff statements prior to or at the Closing and for which a portion of the Purchase Price shall be placed in escrow with an escrow agent for the payment thereof, which liens Grantor shall cause to be released, at no cost or expense to Grantee, within ten (10) days of the recording date of the Deed.

**RESERVING** unto Grantor, its successors and assigns, an EASEMENT IN GROSS (the "CSXT Grand Junction/BTRT Easement") IN PERPETUITY (as hereinafter defined) FOR RAILROAD PURPOSES (as hereinafter defined) in, over or on the Property within the Land; including, but not limited to, the use of all the tracks or Trackage (as hereinafter defined) within the Property; but SUBJECT TO:

1. The terms, conditions and limitations of that certain Trackage Rights Agreement dated effective July 1, 1985 between Consolidated Rail Corporation and the Massachusetts Bay Transportation Authority, an independent authority within the jurisdiction of Grantee ("MBTA"), as amended (the "1985 Operating Agreement").

2. Grantor and Grantee each agree to execute and record any instrument that will be necessary to properly reflect any changes in location or area that are not presently reflected in Exhibit A or to reflect any full or partial release of any rights or property hereunder.

3. Grantor and Grantee agree that the CSXT Grand Junction/BTRT Easement is not retained to the exclusion of the use of the Property by Grantee and its assigns, except that Grantor shall be the exclusive provider of Rail Freight Service (as hereinafter defined), and as otherwise set forth in said 1985 Operating Agreement.

4. Transfer of the CSXT Grand Junction/BTRT Easement shall be governed by the provisions of Exhibit D and Exhibit E attached hereto.

5. The rights of the MBTA to operate Additional Trains, as referred to in Section 5.1.3 of the Definitive Agreement.

6. The terms, conditions and limitations of the Amtrak Agreement. In the event that Grantee or the MBTA enters into a separate agreement with Amtrak after the Second Closing (as defined in said Definitive Agreement) pursuant to which Grantee or the MBTA provides to Amtrak substantially the same service as Grantor is now providing to Amtrak under the Amtrak Agreement in connection with the Railroad Assets, Grantor shall no longer have any rights or obligations (except may be required by law) to use the CSXT Grand Junction/BTRT Easement to provide any services to Amtrak. Grantee or the MBTA, in their sole discretion, reserve the right to negotiate an agreement with Amtrak for all purposes for which Amtrak is authorized to operate in connection with the Railroad Assets; provided, however, that such agreement shall: (i) comply with all applicable laws; (ii) not alter, amend or modify the liability or indemnity obligations of Amtrak and CSXT towards one another under the Amtrak Agreement, (iii) not cause Grantor to be in violation of Grantor's obligations under the Amtrak Agreement as it applies to the Property and (iv) be subject to the CSXT Grand Junction/BTRT Easement and CSXT's rights under the

1985 Operating Agreement, including, without limitation, the windows of operation, maintenance and access. In the event Grantee or the MBTA do not reach agreement with Amtrak in connection with the Property and Amtrak continues to operate under the CSXT Grand Junction/BTRT Easement, CSXT shall forward any revenue earned with respect to the Property after the recording of this deed under the Amtrak Agreement (determined in accordance with generally accepted accounting principles) to Grantee promptly after each payment period.

**7. Definitions of CSXT Grand Junction/BTRT Easement Terms:**

(a) **Perpetuity:** Until this CSXT Grand Junction/BTRT Easement is abandoned or terminated, as provided in the 1985 Operating Agreement herein referenced. In the event of abandonment or termination of any portion of this CSXT Grand Junction/BTRT Easement as provided in the 1985 Operating Agreement, such portion thereof shall automatically be extinguished.

(b) **Trackage:** The railway tracks now or hereafter located on, in or below the Property, and all supporting materials, facilities and structures appurtenant thereto (rails, ties, tie plates, ballast, drainage structures), together with existing or future control devices, signals, switches, communication lines and poles necessary for the safe operation of rail freight; whether main, spur, siding or sidetrack(s); those existing items being the items hereinabove conveyed to Grantee.

(c) **Railroad Purposes:** The right to use all Trackage on the Property for the exclusive provision of Rail Freight Service, together with the right of ingress and egress over the Property and any adjacent property owned by Grantee to and from said Trackage and facilities located within the Property, provided, however, Grantee or the MBTA may use said Trackage for its own freight needs, being the transport of railroad materials, equipment, ballast, rails and the like owned by Grantee or the MBTA, but not common or contract carriage of freight.

(d) **Rail Freight Service:** The transportation by rail of property and movable articles of every kind, character and description over the Property, including but not limited to rail freight transportation service to current and future industries, customers and facilities located along the Property, and supporting activities, over the Property, but excluding detour movements of other railroads permitted by Grantee or the MBTA pursuant to the 1985 Operating Agreement.

There is reserved as part of the CSXT Grand Junction/BTRT Easement Grantor's rights, in common with Grantee, in the Deed of Easements dated December 27, 1962 from Massachusetts Turnpike Authority to The New York Central Railroad recorded [insert recording information] to the extent affected by releases of record.

**GRANTEE HEREBY ACKNOWLEDGES THAT THE SUBJECT PROPERTY IS TRANSFERRED AS IS, WHERE IS AND WITH ALL FAULTS, DEFECTS AND CONDITIONS OF ANY KIND, NATURE OR DESCRIPTION AS OF THE DATE HEREOF, AND THAT THERE HAVE BEEN NO REPRESENTATIONS, WARRANTIES, GUARANTEES, STATEMENTS OR INFORMATION, EXPRESSED OR IMPLIED, PERTAINING TO SUCH PROPERTY, TITLE THERETO, THE VALUE, DESIGN OR CONDITION THEREOF, ITS MERCHANTABILITY OR SUITABILITY FOR ANY USE OR PURPOSE OR ANY OTHER MATTER WHATSOEVER, MADE TO OR FURNISHED TO GRANTEE BY GRANTOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES.**

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In the event of a conflict between the provisions of this Deed, the Definitive Agreement and/or the Operating Agreement, the provisions of the Operating Agreement shall control over the provisions of either this Deed or the Definitive Agreement, and the provisions of this Deed shall control over the Definitive Agreement. The 1985 Operating Agreement and the Definitive Agreement are retained at the offices of the Grantor.

By the recording of this deed, Grantee agrees that the covenants of Grantee herein shall run with title to the Property conveyed, and bind Grantee, Grantee's successors and assigns, and anyone claiming title to or holding Property through Grantee, for the continuing benefit of, and remaining enforceable by, Grantor, its successors and assigns.

Plans prepared for Grantee may be referred to in the Exhibits to this Deed (the "Plans"). Notwithstanding such reference, Grantor has not reviewed and is not obligated to review the Plans, Grantor does not and shall not warrant the accuracy, correctness, or legal sufficiency of the Plans, nor shall reference to the Plans create any covenant or warranty of title with respect to the property shown thereon.

No deed excise stamps are affixed hereto as none are required by law.

**IN WITNESS WHEREOF**, CSX TRANSPORTATION, INC., pursuant to due corporate authority, has caused its name to be executed under seal by its officers hereunto duly authorized.

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

STATE OF FLORIDA )  
 ) SS.  
COUNTY OF DUVAL )

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 200 .

\_\_\_\_\_(SEAL)  
Notary Public  
Print Name:

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**EXHIBIT A**

**(INSERT DESCRIPTION)**



**EXHIBIT B**  
**(Insert Excluded Property Description)**

1. The 1985 Operating Agreement
2. Other Operating Rights [**define**].
3. The CSXT Grand Junction/BTRT Easement

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**EXHIBIT C**  
**(Insert List of Title Exceptions)**

**EXHIBIT D**  
**Provisions Relating to Transfer of CSXT Grand Junction/BTRT Easement**

1. The CSXT Grand Junction/BTRT Easement shall be assignable in whole or in part. Except as hereinafter set forth with respect to transfers to a Related Party (hereinafter defined), neither Grantor, a Related Party, as hereinafter defined, nor any subsequent holder of the benefit of the CSXT Grand Junction/BTRT Easement (each of Grantor, a Related Party and a subsequent holder being a **"Benefitted Holder"**), shall sell, lease, license or otherwise transfer (each such transaction being a **"Transfer"**) the benefit of the CSXT Grand Junction/BTRT Easement, in whole or in part, or any interest therein (any such interest being an **"Easement Interest"**) to a third party who fails to meet the Transferee Standards set forth on **Exhibit E**. Notwithstanding the foregoing to the contrary, no Benefitted Holder shall be required to obtain Grantee's consent for a Transfer of an Easement Interest to a Related Party of the Benefitted Holder which is making the Transfer, and such Related Party shall be deemed to have met the Transferee Standards (a **"Related Party Transfer"**). Grantor, a Related Party or the Benefitted Holder, as the case may be, shall deliver to Grantee written notice of every proposed Transfer of an Easement Interest not less than sixty (60) days prior to the effective date of the Transfer of the Easement Interest. Within such sixty (60) day period, if the Transfer is not to a Related Party, Grantee shall either (i) consent to such transfer, such consent not to be unreasonably withheld, conditioned or delayed and which must be given if the proposed transferee meets the Transferee Standards, or (ii) state in detail the reasons for denial of consent or why Grantee contends that the proposed transferee does not meet the Transferee Standards, as the case may be. The preceding notification provision shall apply to each Transfer by Grantor, a Related Party and by each Benefitted Holder; provided, however, that Grantee shall not have any right to approve a transfer to a Related Party, and shall not apply to any transfer of Other Operating Rights (as defined in **Exhibit B**).
2. If at any time Grantor, or a party which is a Related Party of Grantor (a **"Grantor Related Party"**), makes a Transfer of an Easement Interest to a third party, Grantor, or a Grantor Related Party, shall promptly pay to Grantee a transfer fee of five (5%) percent of the consideration (the **"Easement Transfer Payment"**) paid for such transfer, net of any portion of the consideration attributable to any machinery or equipment included in the transfer. No party to whom Grantor, or a Grantor Related Party, makes an Transfer of an Easement Interest shall be required to make an Easement Transfer Payment with regard to a subsequent Transfer of the same Easement Interest or any part of said Easement Interest. In no event shall Grantor or a Grantor Related Party be responsible for paying an Easement Transfer Payment to Grantee for transactions which are (a) the sale of Other Operating Rights, or (b) in the ordinary course of Grantor's or the Grantor Related Party's business as a freight rail service provider, including without limitation, freight revenue and other income from freight service. Except with respect to the subsequent Transfer of an Easement Interest for which an Easement Transfer Payment has previously been paid, the Easement Transfer Payment shall apply to each Transfer of an Easement Interest (other than a Related Party Transfer) by Grantor or a Grantor Related Party.
3. No Benefitted Holder shall be required to make an Easement Transfer Payment in connection with any Transfer of an Easement Interest, in whole or in part, to any person, firm, partnership, corporation or other entity now or hereafter affiliated with such Benefitted Holder or in connection with a merger, reorganization, or sale of all or substantially all of such Benefitted

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Holder's assets (collectively, a **"Related Party"**); provided, however, that a Grantor Related Party shall take such transfer or assignment subject to the aforesaid provisions pertaining to Grantee's right to collect an Easement Transfer Payment to the extent applicable at the time of such transfer or assignment.

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**EXHIBIT E**  
**Transferee Standards**

**EXHIBIT I**

**EXHIBIT I**

**DRAFT – SUBJECT TO FURTHER REVISION UPON FINALIZATION OF  
ALL REQUIRED AGREEMENTS**

**THIS INSTRUMENT HAS BEEN PREPARED IN TWO (2) COUNTERPARTS  
FOR SIMULTANEOUS RECORDING IN TWO (2) COUNTIES.**

This instrument prepared by  
or under the direction of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RELEASE DEED**

**THIS RELEASE DEED**, made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Grantor", and THE COMMONWEALTH OF MASSACHUSETTS, acting through the MASSACHUSETTS DEPARTMENT OF TRANSPORTATION, whose mailing address is \_\_\_\_\_, hereinafter called "Grantee,"

(Wherever used herein, the terms "Grantor" and "Grantee" may be construed in the singular or plural as the context may require or admit, and for purposes of exceptions, reservations and/or covenants, shall include the heirs, legal representatives and assigns of individuals or the successors and assigns of corporations or state agencies.)

**WITNESSETH:**

**WHEREAS**, Grantor has interests in (i) a line of railroad over which rail freight service is presently conducted, consisting of (1) the New Bedford Subdivision, which is 18.40 miles between milepost QN 13.40 at Cotley Jct. and milepost QN 31.80 at New Bedford, (2) the Fall River Subdivision, which is 14.20 miles between milepost QNF 0.00 at Myricks and QNF 14.20 at Fall River, and (3) 0.08 mile of the North Dartmouth Industrial Track between milepost QND 0.00 and QND 0.08, collectively a

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distance of approximately 32.68 miles (the "South Coast Lines"), in the Commonwealth of Massachusetts ("Commonwealth"), and (ii) certain specified properties contiguous to such line; and

**WHEREAS**, Grantor has interests in property beneath a line of railroad over which rail freight service is presently conducted by the Bay Colony Railroad Corporation between milepost QND 0.08 and QND 6.00, consisting of 5.92 miles; and

**WHEREAS**, pursuant to a certain Definitive Agreement dated as of October 10, 2008 between Grantee and Grantor, as amended (the "Definitive Agreement"), Grantee agreed to acquire Grantor's interests in such properties and such line of railroad (as hereinafter more particularly described) for the purposes of accommodating public demand for commuter rail transportation, roadways and other public purposes including the continued provision of rail freight service by Grantor and commuter rail service; and

**WHEREAS**, the parties desire that Grantee acquire Grantor's interest in such properties and line of railroad and that Grantor retain, and not transfer to the Grantee, a perpetual easement in gross over a portion of such properties and line of railroad, limited for the purpose of the exclusive provision of freight rail service subject to the terms and limitations herein; and

**WHEREAS**, this conveyance is made under threat of and in lieu of condemnation by Grantee of the real property of Grantor;

**NOW THEREFORE**, that Grantor, in consideration of the sum of Twenty One Million Dollars (\$21,000,000.00) paid, does hereby grant to Grantee all right, title and interest of Grantor, if any, in and to those certain tracts or parcels of land situate, lying and being in the Counties of Bristol and Plymouth, Massachusetts, more particularly described in Exhibit A attached hereto and incorporated herein (the "Land");

**BUT EXCLUDING** and excepting unto Grantee those parcels, rights and interests listed or shown on Exhibit B attached hereto and incorporated herein, as well as all privileges, hereditaments and appurtenances appertaining to any such parcels, rights and interests, and the rights and interests related to the CSXT South Coast Easement (hereinafter defined) (the "Excluded Property");

**TOGETHER WITH** all tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and other fixtures and improvements which are affixed as of the date hereof to the Land (other than any such property affixed to the Excluded Property) as well as all privileges, hereditaments and appurtenances appertaining to the Land or any of the foregoing (other than the Excluded Property) (the "Ancillary Property" and together with the Land, the "Property").

**THE PROPERTY IS CONVEYED EXPRESSLY SUBJECT TO:** (a) those rights, interests, contracts, agreements, leases, licenses and easements which are listed or described on Exhibit C attached hereto and incorporated hereof; (b) the CSXT South Coast Easement; (c) building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations, all as existing as of the Closing Date; (d) taxes, tax liens and assessments, both general and special, which are not yet due and payable but which may become due or payable on the Property on or after the Closing Date; (e) reservations or exceptions whether or not of record, including, without limitation, reservations or exceptions of minerals or mineral rights by third parties; public utility and other easements; and



easements, crossings, occupancies and rights-of-way, howsoever created, existing as of the Closing Date; (f) encroachments or any other state of facts existing as of the Closing Date which might be revealed from an accurate survey, title search or personal inspection of the Property; (g) the rights of others in existing roads, streets, ways, alleys and party walls; (h) mortgage liens with banks or other institutional real estate lenders pertaining to the Property created by Grantor, for which Grantor will obtain payoff statements prior to or at the Closing and for which a portion of the Purchase Price shall be placed in escrow with an escrow agent for the payment thereof, which liens Grantor shall cause to be released, at no cost or expense to Grantee, within ten (10) days of the recording date of the Deed; and (i) the rights of the Bay Colony Railroad in the North Dartmouth Industrial Track (also known as the Watuppa Branch).

**RESERVING** unto Grantor, its successors and assigns, an **EASEMENT IN GROSS** (the "CSXT South Coast Easement") **IN PERPETUITY** (as hereinafter defined) **FOR RAILROAD PURPOSES** (as hereinafter defined) in, over or on the Property within the Land; including, but not limited to, the use of all the tracks or Trackage (as hereinafter defined) within the Property (except the portion excluded as hereinafter described); but **SUBJECT TO**:

1. The terms, conditions and limitations of any South Coast Operating Agreement, which shall not unreasonably interfere with the common carrier obligations to operate over the CSXT South Coast Easement, hereinafter entered into between any purchaser of the CSXT South Coast Easement ("Purchaser") and Massachusetts Bay Transportation Authority, an independent authority within the jurisdiction of Grantee ("MBTA") (said South Coast Operating Agreement or any existing operating agreement between Purchaser and MBTA being amended to include the Property, being hereinafter termed the "South Coast Operating Agreement").

2. Grantor and Grantee each agree to execute and record any instrument that will be necessary to properly reflect any changes in location or area that are not presently reflected in **Exhibit A** or to reflect any full or partial release of any rights or property hereunder.

3. Grantor and Grantee agree that the CSXT South Coast Easement is not retained to the exclusion of the use of the Property by Grantee and its assigns, except that Grantor shall be the exclusive provider of Rail Freight Service (as hereinafter defined), and as otherwise set forth in said South Coast Operating Agreement.

4. Transfer of the CSXT South Coast Easement shall be governed by the provisions of **Exhibit D** and **Exhibit E** attached hereto.

5. Definitions of CSXT South Coast Easement Terms:

(a) **Perpetuity**: Until this CSXT South Coast Easement is abandoned or terminated, as may be provided in the South Coast Operating Agreement. In the event of abandonment or termination of any portion of this CSXT South Coast Easement as may be provided in the South Coast Operating Agreement, such portion thereof shall automatically be extinguished.

(b) **Trackage**: The railway tracks now or hereafter located on, in or below the Property, and all supporting materials, facilities and structures appurtenant thereto (rails, ties, tie plates, ballast, drainage structures), together with existing or future control devices, signals, switches,

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communication lines and poles necessary for the safe operation of rail freight; whether main, spur, siding or sidetrack(s); those existing items being the items hereinabove conveyed to Grantee.

(c) Railroad Purposes: The right to use all Trackage on the Property for the exclusive provision of Rail Freight Service, together with the right of ingress and egress over the Property and any adjacent property owned by Grantee to and from said Trackage and facilities located within the Property, provided, however, Grantee or the MBTA may use said Trackage for its own freight needs, being the transport of railroad materials, equipment, ballast, rails and the like owned by Grantee or the MBTA, but not common or contract carriage of freight.

(d) Rail Freight Service: The transportation by rail of property and movable articles of every kind, character and description over the Property, including but not limited to rail freight transportation service to current and future industries, customers and facilities located along the Property, and supporting activities, over the Property, but excluding detour movements of other railroads permitted by Grantee or the MBTA pursuant to the South Coast Operating Agreement.

(e) Exclusion. There is excluded from the CSXT South Coast Easement the portion of the Property described as Milepost QND 0.08 to QND 6.0.

GRANTEE HEREBY ACKNOWLEDGES THAT THE SUBJECT PROPERTY IS TRANSFERRED AS IS, WHERE IS AND WITH ALL FAULTS, DEFECTS AND CONDITIONS OF ANY KIND, NATURE OR DESCRIPTION AS OF THE DATE HEREOF, AND THAT THERE HAVE BEEN NO REPRESENTATIONS, WARRANTIES, GUARANTEES, STATEMENTS OR INFORMATION, EXPRESSED OR IMPLIED, PERTAINING TO SUCH PROPERTY, TITLE THERETO, THE VALUE, DESIGN OR CONDITION THEREOF, ITS MERCHANTABILITY OR SUITABILITY FOR ANY USE OR PURPOSE OR ANY OTHER MATTER WHATSOEVER, MADE TO OR FURNISHED TO GRANTEE BY GRANTOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES.

In the event of a conflict between the provisions of this Deed, the Definitive Agreement and/or the Operating Agreement, the provisions of the Operating Agreement shall control over the provisions of either this Deed or the Definitive Agreement, and the provisions of this Deed shall control over the Definitive Agreement. The Definitive Agreement is retained at the offices of the Grantor; the South Coast Operating Agreement is retained at the offices of the Purchaser.

By the recording of this deed, Grantee agrees that the covenants of Grantee herein shall run with title to the Property conveyed, and bind Grantee, Grantee's successors and assigns, and anyone claiming title to or holding Property through Grantee, for the continuing benefit of, and remaining enforceable by, Grantor, its successors and assigns.

Plans prepared for Grantee may be referred to in the Exhibits to this Deed (the "Plans"). Notwithstanding such reference. Grantor has not reviewed and is not obligated to review the Plans, and Grantor does not and shall not warrant the accuracy, correctness, or legal sufficiency of the Plans, nor shall reference to the Plans create any covenant or warranty of title with respect to the property shown thereon.

No deed excise stamps are affixed hereto as none are required by law.

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**IN WITNESS WHEREOF**, CSX TRANSPORTATION, INC., pursuant to due corporate authority, has caused its name to be executed under seal by its officers hereunto duly authorized.

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Print Title: \_\_\_\_\_

STATE OF FLORIDA )  
 ) SS.  
COUNTY OF DUVAL )

I, \_\_\_\_\_, a Notary Public of the State of Florida and the County of Duval, do certify that, on the date below, before me in said County came \_\_\_\_\_ (X) to me known, and/or ( ) proven by satisfactory current evidence consisting of a Florida drivers license to be the person whose name is subscribed to the above instrument, who, being by me first duly sworn, did make oath, acknowledge and say that: (s)he resides in Jacksonville, Duval County, Florida; (s)he is \_\_\_\_\_, signing on behalf of CSX Transportation, Inc., the corporation described in and which executed said instrument; (s)he is fully informed of the contents of the instrument; (s)he knows the seal of said corporation; the seal affixed to said instrument is such seal; it was so affixed by authority of the Board of Directors of said corporation; (s)he signed his/her name thereto for said corporation pursuant to Board authority; and instrument is the free act and deed of said corporation signed voluntary for its stated purposes; and the conveyance herein is not part of a transaction, sale, lease, exchange or other transfer or conveyance of all or substantially all of the property and/or assets of the Grantor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 200 .

My commission expires on: \_\_\_\_\_ (SEAL)  
Notary Public  
Print Name: \_\_\_\_\_

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**EXHIBIT A**

**(INSERT DESCRIPTION)**

**EXHIBIT B**  
**(Insert Excluded Property Description)**

1. The South Coast Operating Agreement
2. Other Operating Rights **[define]**.
3. The CSXT South Coast Easement

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**EXHIBIT C**  
**(Insert List of Title Exceptions)**

- 1. Land Lease Agreement dated February 1, 2004 between Grantor and Bay Colony Railroad Corporation**
- 2. [Other exceptions per title commitment]**

**EXHIBIT D**  
**Provisions Relating to Transfer of CSXT South Coast Easement**

1. The CSXT South Coast Easement shall be assignable in whole or in part. Except as hereinafter set forth with respect to transfers to a Related Party (hereinafter defined), neither Grantor, a Related Party, as hereinafter defined, nor any subsequent holder of the benefit of the CSXT South Coast Easement (each of Grantor, a Related Party and a subsequent holder being a **"Benefitted Holder"**), shall sell, lease, license or otherwise transfer (each such transaction being a **"Transfer"**) the benefit of the CSXT South Coast Easement, in whole or in part, or any interest therein (any such interest being an **"Easement Interest"**) to a third party who fails to meet the Transferee Standards set forth on Exhibit E, provided, however, Grantor and any Related Party of Grantor shall in any event be deemed to meet said Transferee Standards. Notwithstanding the foregoing to the contrary, no Benefitted Holder shall be required to obtain Grantee's consent for a Transfer of an Easement Interest to a Related Party of the Benefitted Holder which is making the Transfer, and such Related Party shall be deemed to have met the Transferee Standards (a **"Related Party Transfer"**). Grantor, a Related Party or the Benefitted Holder, as the case may be, shall deliver to Grantee written notice of every proposed Transfer of an Easement Interest not less than sixty (60) days prior to the effective date of the Transfer of the Easement Interest. Within such sixty (60) day period, if the Transfer is not to a Related Party, Grantee shall either (i) consent to such transfer, such consent not to be unreasonably withheld, conditioned or delayed and which must be given if the proposed transferee meets the Transferee Standards, or (ii) state in detail the reasons for denial of consent or why Grantee contends that the proposed transferee does not meet the Transferee Standards, as the case may be. The preceding notification provision shall apply to each Transfer by Grantor, a Related Party and by each Benefitted Holder; provided, however, that Grantee shall not have any right to approve a transfer to a Related Party, and shall not apply to any transfer of Other Operating Rights (as defined in Exhibit B).
2. If at any time Grantor, or a party which is a Related Party of Grantor (a **"Grantor Related Party"**), makes a Transfer of an Easement Interest to a third party, Grantor, or a Grantor Related Party, shall promptly pay to Grantee a transfer fee of five (5%) percent of the consideration (the **"Easement Transfer Payment"**) paid for such transfer, net of any portion of the consideration attributable to any machinery or equipment included in the transfer. No party to whom Grantor, or a Grantor Related Party, makes an Transfer of an Easement Interest shall be required to make an Easement Transfer Payment with regard to a subsequent Transfer of the same Easement Interest or any part of said Easement Interest. In no event shall Grantor or a Grantor Related Party be responsible for paying an Easement Transfer Payment to Grantee for transactions which are (a) the sale of Other Operating Rights, or (b) in the ordinary course of Grantor's or the Grantor Related Party's business as a freight rail service provider, including without limitation, freight revenue and other income from freight service. Except with respect to the subsequent Transfer of an Easement Interest for which an Easement Transfer Payment has previously been paid, the Easement Transfer Payment shall apply to each Transfer of an Easement Interest (other than a Related Party Transfer) by Grantor or a Grantor Related Party.
3. No Benefitted Holder shall be required to make an Easement Transfer Payment in connection with any Transfer of an Easement Interest, in whole or in part, to any person, firm, partnership, corporation or other entity now or hereafter affiliated with such Benefitted Holder or in connection with a merger, reorganization, or sale of all or substantially all of such Benefitted

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Holder's assets (collectively, a **"Related Party"**); provided, however, that a Grantor Related Party shall take such transfer or assignment subject to the aforesaid provisions pertaining to Grantee's right to collect an Easement Transfer Payment to the extent applicable at the time of such transfer or assignment.

4. Notwithstanding the foregoing, Grantee consents to the sale of the CSXT South Coast Easement to Massachusetts Coastal Railroad pursuant to an instrument to be recorded herewith (the "Initial Sale") and agrees that the Initial Sale is exempt from the foregoing provisions of this Exhibit D with respect to (a) any requirement that the Grantee consent to, or be notified of, the Initial Sale, (b) the applicability of Transferee Standards to the Initial Sale, or (c) the payment of any Easement Transfer Payment for the Initial Sale, and after said Initial Sale said Massachusetts Coastal Railroad shall be deemed a Benefitted Holder.



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**EXHIBIT E**  
**Transferee Standards**

EXHIBIT J



**EXHIBIT J**

**DRAFT – SUBJECT TO FURTHER REVISION UPON FINALIZATION OF  
ALL REQUIRED AGREEMENTS [Possibly 4 counties if Norfolk is included]**

**THIS INSTRUMENT HAS BEEN PREPARED IN THREE (3) COUNTERPARTS  
FOR SIMULTANEOUS RECORDING IN THREE (3) COUNTIES.**

This instrument prepared by  
or under the direction of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RELEASE DEED**

**THIS RELEASE DEED**, made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Grantor", and THE COMMONWEALTH OF MASSACHUSETTS, acting through the MASSACHUSETTS DEPARTMENT OF TRANSPORTATION, whose mailing address is \_\_\_\_\_, hereinafter called "Grantee,"

(Wherever used herein, the terms "Grantor" and "Grantee" may be construed in the singular or plural as the context may require or admit, and for purposes of exceptions, reservations and/or covenants, shall include the heirs, legal representatives and assigns of individuals or the successors and assigns of corporations or state agencies.)

**WITNESSETH:**

**WHEREAS**, Grantor has interests in (i) a line of railroad over which rail freight, commuter rail and intercity rail passenger service are presently conducted, consisting of (a) 21.38 miles starting at Milepost QB 0.00 in Boston, Massachusetts and ending at QB 21.38 at or near Framingham, Massachusetts, and (b) 22.92 miles starting at Milepost QB 21.38 at or near Framingham, Massachusetts, and ending at Milepost QB 44.30 at or near Worcester, Massachusetts, and (ii) certain specified properties contiguous to such line; and

**WHEREAS**, pursuant to a certain Definitive Agreement dated as of October 10, 2008 between Grantee and Grantor, as amended (the "Definitive Agreement"), Grantee agreed to acquire Grantor's interests in such properties and such line of railroad (as hereinafter more particularly described) for the purposes of accommodating public demand for commuter rail transportation, roadways and other public purposes including the continued provision of rail freight service by Grantor, intercity rail passenger service and commuter rail service; and

**WHEREAS**, the parties desire that Grantee acquire Grantor's interest in such properties and line of railroad and that Grantor retain, and not transfer to the Grantee, a perpetual easement in gross over a portion of such properties and line of railroad, limited for the purpose of the exclusive provision of rail freight service subject to the terms and conditions set forth herein and to the rights of the National Railroad Passenger Corporation ("Amtrak") under the Agreement dated June 1, 1999 and all supplements thereto permitted by the Operating Agreements (as hereinafter defined), such agreement and supplements being between Grantor and Amtrak or any replacement agreement described in Section 5 hereof provided such replacement agreement complies with the terms and conditions set forth in said Section 5 (collectively, the "Amtrak Agreement"), it being the intention of the parties that Grantor remain, and the Grantee not become, the rail carrier subject to the Interstate Commerce Act, as revised, the Railway Labor Act, as revised, or any other federal law relating to the provision of railroad transportation on such properties;

**WHEREAS**, this conveyance is made under threat of and in lieu of condemnation by Grantee of the real property of Grantor;

**NOW THEREFORE**, that Grantor, in consideration of the sum of Fifty Million Dollars (\$50,000,000.00) paid, does hereby grant to Grantee all right, title and interest of Grantor, if any, in and to those certain tracts or parcels of land situate, lying and being in the Counties of Suffolk Middlesex and Worcester, [Note: verify no part of line in Norfolk County] Massachusetts, more particularly described in Exhibit A attached hereto and incorporated herein (the "Land");

**BUT EXCLUDING** and excepting unto Grantee those parcels, rights and interests listed or shown on Exhibit B attached hereto and incorporated herein, as well as all privileges, hereditaments and appurtenances appertaining to any such parcels, rights and interests, and the rights and interests related to the CSXT Main Line Easement (as hereinafter defined) (the "Excluded Property");

**TOGETHER WITH** all tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and other fixtures and improvements which are affixed as of the date hereof to the Land (other than any such property affixed to the Excluded Property) as well as all privileges, hereditaments and appurtenances appertaining to the Land or any of the foregoing (other than the Excluded Property) (the "Ancillary Property" and together with the Land, the "Property").

**THE PROPERTY IS CONVEYED EXPRESSLY SUBJECT TO:** (a) those rights, interests, contracts, agreements, leases, licenses and easements which are listed or described on Exhibit C attached hereto and incorporated hereof; (b) the rights of Amtrak under the Amtrak Agreement; (c) the CSXT Main Line Easement; (d) building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations, all as existing as of the Closing Date; (e) taxes, tax

liens and assessments, both general and special, which are not yet due and payable but which may become due or payable on the Property on or after the Closing Date; (f) reservations or exceptions whether or not of record, including, without limitation, reservations or exceptions of minerals or mineral rights by third parties; public utility and other easements; and easements, crossings, occupancies and rights-of-way, howsoever created, existing as of the Closing Date; (g) encroachments or any other state of facts existing as of the Closing Date which might be revealed from an accurate survey, title search or personal inspection of the Property; (h) the rights of others in existing roads, streets, ways, alleys and party walls; and (i) mortgage liens with banks or other institutional real estate lenders pertaining to the Property created by Grantor, for which Grantor will obtain payoff statements prior to or at the Closing and for which a portion of the Purchase Price shall be placed in escrow with an escrow agent for the payment thereof, which liens Grantor shall cause to be released, at no cost or expense to Grantee, within ten (10) days of the recording date of the Deed.

**RESERVING** unto Grantor, its successors and assigns, an EASEMENT IN GROSS (the "CSXT Main Line Easement") IN PERPETUITY (as hereinafter defined) FOR RAILROAD PURPOSES (as hereinafter defined) in, over or on the Property within the Land; including, but not limited to, the use of all the tracks or Trackage (as hereinafter defined) within the Property; but SUBJECT TO:

1. The terms, conditions and limitations of (a) the 2009 Operating Agreement between Grantor and Massachusetts Bay Transportation Authority, an independent authority within the jurisdiction of Grantee ("MBTA"), dated \_\_\_\_\_, and (b) that certain Trackage Rights Agreement dated effective July 1, 1985 between Consolidated Rail Corporation and the MBTA (said 2009 Operating Agreement and said Trackage Rights Agreement, as amended, altered, cancelled or terminated pursuant to their terms, being collectively termed the "Operating Agreements").

2. Grantor and Grantee each agree to execute and record any instrument that will be necessary to properly reflect any changes in location or area that are not presently reflected in Exhibit A or to reflect any full or partial release of any rights or property hereunder.

3. Grantor and Grantee agree that the CSXT Main Line Easement is not retained to the exclusion of the use of the Property by Grantee and its assigns, except that Grantor shall be the exclusive provider of Rail Freight Service (as hereinafter defined), and as otherwise set forth in said Operating Agreements.

4. Transfer of the CSXT Main Line Easement shall be governed by the provisions of Exhibit D and Exhibit E attached hereto.

5. The terms and provisions of the Amtrak Agreement. In the event that Grantee or the MBTA enters into a separate agreement with Amtrak pursuant to which Grantee or the MBTA provides to Amtrak substantially the same service as Grantor is now providing to Amtrak under the Amtrak Agreement in connection with the Railroad Assets, Grantor shall no longer have any rights or obligations (except may be required by law) to use the CSXT Main Line Easement to provide any services to Amtrak. Grantee or the MBTA, in their sole discretion, reserve the right to negotiate an agreement with Amtrak for all purposes for which Amtrak is authorized to operate in connection with the Railroad Assets; provided, however, that such agreement shall: (i) comply with all applicable laws; (ii) not alter, amend or modify the liability or indemnity obligations of Amtrak and CSXT towards one another under the Amtrak Agreement, (iii) not cause Grantor to be in violation of Grantor's obligations under the Amtrak

Agreement as it applies to the Property and (iv) be subject to the CSXT Main Line Easement and CSXT's rights under the Operating Agreements, including, without limitation, the windows of operation, maintenance and access. In the event Grantee or the MBTA do not reach agreement with Amtrak in connection with the Property and Amtrak continues to operate under the CSXT Main Line Easement, CSXT shall forward any revenue earned with respect to the Property after the recording of this deed under the Amtrak Agreement (determined in accordance with generally accepted accounting principles) to Grantee promptly after each payment period.

**6. Definitions of CSXT Main Line Easement Terms:**

(a) **Perpetuity:** Until this CSXT Main Line Easement is abandoned or terminated, as provided in the Operating Agreements herein referenced. In the event of abandonment or termination of any portion of this CSXT Main Line Easement as provided in the Operating Agreement, such portion thereof shall automatically be extinguished.

(b) **Trackage:** The railway tracks now or hereafter located on, in or below the Property, and all supporting materials, facilities and structures appurtenant thereto (rails, ties, tie plates, ballast, drainage structures), together with existing or future control devices, signals, switches, communication lines and poles necessary for the safe operation of rail freight; whether main, spur, siding or sidetrack(s); those existing items being the items hereinabove conveyed to Grantee.

(c) **Railroad Purposes:** The right to use all Trackage on the Property for the exclusive provision of Rail Freight Service, together with the right of ingress and egress over the Property and any adjacent property owned by Grantee to and from said Trackage and facilities located within the Property, provided, however, Grantee or the MBTA may use said Trackage for its own freight needs, being the transport of railroad materials, equipment, ballast, rails and the like owned by Grantee or the MBTA, but not common or contract carriage of freight.

(d) **Rail Freight Service:** The transportation by rail of property and movable articles of every kind, character and description over the Property, including but not limited to rail freight transportation service to current and future industries, customers and facilities located along the Property, and supporting activities, over the Property, but excluding detour movements of other railroads permitted by Grantee or the MBTA pursuant to the Operating Agreements.

There is reserved as part of the CSXT Main Line Easement Grantor's rights, in common with Grantee and the MBTA, in the following easements; (a) a Deed of Easements dated December 27, 1962 from Massachusetts Turnpike Authority to The New York Central Railroad recorded [insert recording information] to the extent affected by releases of record, and (b) a deed of the Penn Central Transportation Company dated January 17, 1973 to the MBTA [insert recording information].

GRANTEE HEREBY ACKNOWLEDGES THAT THE SUBJECT PROPERTY IS TRANSFERRED AS IS, WHERE IS AND WITH ALL FAULTS, DEFECTS AND CONDITIONS OF ANY KIND, NATURE OR DESCRIPTION AS OF THE DATE HEREOF, AND THAT THERE HAVE BEEN NO REPRESENTATIONS, WARRANTIES, GUARANTEES, STATEMENTS OR INFORMATION, EXPRESSED OR IMPLIED, PERTAINING TO SUCH PROPERTY, TITLE THERETO, THE VALUE, DESIGN OR CONDITION THEREOF, ITS MERCHANTABILITY OR SUITABILITY FOR ANY USE OR PURPOSE OR ANY OTHER MATTER WHATSOEVER, MADE

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TO OR FURNISHED TO GRANTEE BY GRANTOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES.

In the event of a conflict between the provisions of this Deed, the Definitive Agreement and/or the Operating Agreements, the provisions of the Operating Agreements shall control over the provisions of either this Deed or the Definitive Agreement, and the provisions of this Deed shall control over the Definitive Agreement. The Operating Agreements and the Definitive Agreement are retained at the offices of the Grantor.

By the recording of this deed, Grantee agrees that the covenants of Grantee herein shall run with title to the Property conveyed, and bind Grantee, Grantee's successors and assigns, and anyone claiming title to or holding Property through Grantee, for the continuing benefit of, and remaining enforceable by, Grantor, its successors and assigns.

Plans prepared for Grantee may be referred to in the Exhibits to this Deed (the "Plans"). Notwithstanding such reference. Grantor has not reviewed and is not obligated to review the Plans, and Grantor does not and shall not warrant the accuracy, correctness, or legal sufficiency of the Plans, nor shall reference to the Plans create any covenant or warranty of title with respect to the property shown thereon.

No deed excise stamps are affixed hereto as none are required by law.

**IN WITNESS WHEREOF**, CSX TRANSPORTATION, INC., pursuant to due corporate authority, has caused its name to be executed under seal by its officers hereunto duly authorized.

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

STATE OF FLORIDA )  
 ) SS.  
COUNTY OF DUVAL )

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 200 .

\_\_\_\_\_(SEAL)  
Notary Public  
Print Name:



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**EXHIBIT A**

(INSERT DESCRIPTION)

**EXHIBIT B**  
**(Insert Excluded Property Description)**

1. All such right, title, interest, easement or right of access on or over any real property and interests therein the fee title to which is owned as of October 10, 2008 by the President and Fellows of Harvard College or Harvard University Beacon Yards, LLC.
2. The Operating Agreements
3. Other Operating Rights [define].
4. The CSXT Main Line Easement

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**EXHIBIT C**  
**(Insert List of Title Exceptions)**

**EXHIBIT D**  
**Provisions Relating to Transfer of CSXT Main Line Easement**

1. The CSXT Main Line Easement shall be assignable in whole or in part. Except as hereinafter set forth with respect to transfers to a Related Party (hereinafter defined), neither Grantor, a Related Party, as hereinafter defined, nor any subsequent holder of the benefit of the CSXT Main Line Easement (each of Grantor, a Related Party and a subsequent holder being a **"Benefitted Holder"**), shall sell, lease, license or otherwise transfer (each such transaction being a **"Transfer"**) the benefit of the CSXT Main Line Easement, in whole or in part, or any interest therein (any such interest being an **"Easement Interest"**) to a third party who fails to meet the Transferee Standards set forth on Exhibit E. Notwithstanding the foregoing to the contrary, no Benefitted Holder shall be required to obtain Grantee's consent for a Transfer of an Easement Interest to a Related Party of the Benefitted Holder which is making the Transfer, and such Related Party shall be deemed to have met the Transferee Standards (a **"Related Party Transfer"**). Grantor, a Related Party or the Benefitted Holder, as the case may be, shall deliver to Grantee written notice of every proposed Transfer of an Easement Interest not less than sixty (60) days prior to the effective date of the Transfer of the Easement Interest. Within such sixty (60) day period, if the Transfer is not to a Related Party, Grantee shall either (i) consent to such transfer, such consent not to be unreasonably withheld, conditioned or delayed and which must be given if the proposed transferee meets the Transferee Standards, or (ii) state in detail the reasons for denial of consent or why Grantee contends that the proposed transferee does not meet the Transferee Standards, as the case may be. The preceding notification provision shall apply to each Transfer by Grantor, a Related Party and by each Benefitted Holder; provided, however, that Grantee shall not have any right to approve a transfer to a Related Party, and shall not apply to any transfer of Other Operating Rights (as defined in Exhibit B).
2. If at any time Grantor, or a party which is a Related Party of Grantor (a **"Grantor Related Party"**), makes a Transfer of an Easement Interest to a third party, Grantor, or a Grantor Related Party, shall promptly pay to Grantee a transfer fee of five (5%) percent of the consideration (the **"Easement Transfer Payment"**) paid for such transfer, net of any portion of the consideration attributable to any machinery or equipment included in the transfer. No party to whom Grantor, or a Grantor Related Party, makes an Transfer of an Easement Interest shall be required to make an Easement Transfer Payment with regard to a subsequent Transfer of the same Easement Interest or any part of said Easement Interest. In no event shall Grantor or a Grantor Related Party be responsible for paying an Easement Transfer Payment to Grantee for transactions which are (a) the sale of Other Operating Rights, or (b) in the ordinary course of Grantor's or the Grantor Related Party's business as a freight rail service provider, including without limitation, freight revenue and other income from freight service. Except with respect to the subsequent Transfer of an Easement Interest for which an Easement Transfer Payment has previously been paid, the Easement Transfer Payment shall apply to each Transfer of an Easement Interest (other than a Related Party Transfer) by Grantor or a Grantor Related Party.
3. No Benefitted Holder shall be required to make an Easement Transfer Payment in connection with any Transfer of an Easement Interest, in whole or in part, to any person, firm, partnership, corporation or other entity now or hereafter affiliated with such Benefitted Holder or in connection with a merger, reorganization, or sale of all or substantially all of such Benefitted Holder's assets (collectively, a **"Related Party"**); provided, however, that a Grantor Related

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Party shall take such transfer or assignment subject to the aforesaid provisions pertaining to Grantee's right to collect an Easement Transfer Payment to the extent applicable at the time of such transfer or assignment.

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**EXHIBIT E**  
**Transferee Standards**

**EXHIBIT K**



# **Massachusetts Bay Transportation Authority**

*Deval L. Patrick*  
Governor

*Timothy P. Murray*  
Lt. Governor

*Jeffrey B. Mullan*  
Secretary & CEO

*John R. Jenkins*  
MassDOT  
Board Chair

*William A. Mitchell, Jr.*  
Acting General Manager and  
Acting Rail & Transit Administrator

November 23, 2009

John F. Kennedy  
President  
Massachusetts Coastal Railroad LLC  
68 Center Street, Suite 20  
Hyannis, Massachusetts 02601

**Re: South Coast Lines Operating Agreement**

Dear Mr. Kennedy:

This letter of intent sets forth the terms which shall govern the respective rights and responsibilities of the Massachusetts Bay Transportation Authority ("MBTA") and Massachusetts Coastal Railroad LLC ("Mass Coastal") with respect to the use and operation of those certain railroad properties known as the "South Coast Lines" upon Mass Coastal's acquisition of the freight easement described below. These terms shall be reflected in the operating agreement between the MBTA and Mass Coastal described below.

As you know, the MBTA and CSXT Transportation, Inc. ("CSXT") have entered into a certain Definitive Agreement dated as of October 10, 2008 (the "Definitive Agreement"), as amended by a First Amendment dated November 23, 2009, pursuant to which CSXT has agreed to convey the real property and railroad assets that constitute the South Coast Lines to the Massachusetts Department of Transportation ("MassDOT"). As set forth in the Definitive Agreement, CSXT shall retain a permanent freight easement in the South Coast Lines (the "Freight Easement"). Simultaneously with the transfer from CSXT to MassDOT of the South Coast Lines, CSXT shall transfer the Freight Easement to Mass Coastal pursuant to a certain Purchase and Sale Agreement of Permanent Freight Easement dated as of May 14, 2010.

The transfer of the South Coast Lines to MassDOT is contingent upon the execution and delivery by the MBTA and Mass Coastal of an operating agreement governing each party's rights and obligations with respect to the South Coast Lines (the "South Coast Operating Agreement"). MassDOT is purchasing the South Coast Lines as part of its plan to reconstruct the South Coast Lines to accommodate passenger rail service (the "South Coast Rail Project").

The MBTA and Mass Coastal intend that the terms outlined herein and the terms of the South Coast Operating Agreement be such that MassDOT's acquisition of the South Coast Lines not require Surface Transportation Board approval under either 49 U.S.C. 10901 or 49 U.S.C.





11323. The parties intend that the terms be consistent with the standards established in Maine DOT – Acquisition Exemption – Maine Central R.R. Co., 8 I.C.C.2d 835 (1991) and subsequent decisions of the Interstate Commerce Commission and the Surface Transportation Board (henceforth “State of Maine”). Specifically, the parties intend that the South Coast Operating Agreement will allow Mass Coastal to perform rail freight services on the South Coast Lines, and that neither the sale of the South Coast Lines to MassDOT nor the use that the MBTA will make of the South Coast Lines will materially interfere with Mass Coastal’s ability to meet its common carrier obligations under the Freight Easement.

We have discussed with you and your staff the basic terms of a South Coast Operating Agreement, and the MBTA and Mass Coastal have agreed to the key terms set forth below.<sup>1</sup> In completing the South Coast Operating Agreement, the MBTA will ensure that the final terms uphold MassDOT's assurances to the Surface Transportation Board that MassDOT and the MBTA will refrain from interfering materially with Mass Coastal's right and obligation to provide rail freight service.

1. Duration: The South Coast Operating Agreement shall commence as of the date of the transfer of the Freight Easement from CSXT to Mass Coastal and shall have a term of thirty (30) years.
2. Use of South Coast Lines
  - a. From the commencement date of the South Coast Operating Agreement until the commencement of construction of the South Coast Rail Project, the South Coast Lines shall be designated “Freight Only Rail Property,” and Mass Coastal freight service shall be the only service operating on the rail properties.
  - b. During the construction of the South Coast Rail Project, the existing right of way shall remain Freight Only Rail Property, provided, however, that the parties shall agree upon terms and conditions allowing MassDOT to perform such activities as are required in connection with construction and maintenance, without interference with Mass Coastal’s freight operations.
  - c. Upon the MBTA’s commencement of passenger service on the reconstructed South Coast Lines, Mass Coastal’s freight service shall begin operating on the reconstructed lines, which shall become “Joint Usage Rail Properties.” The MBTA shall have the right to use the Joint Usage Rail Properties for the purpose of providing passenger services, provided that such usage does not interfere unreasonably with Mass Coastal’s right to operate freight service pursuant to the Freight Easement, including its ability to provide common carrier service to the extent required by State of Maine. The parties shall agree in the South Coast Operating Agreement on operating windows or other scheduling mechanisms that

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<sup>1</sup> On the part of the MBTA, the South Coast Operating Agreement is subject to the approval of the MBTA Board of Directors.

accommodate both MBTA commuter rail passenger service and Mass Coastal freight service.

- d. Mass Coastal shall retain full discretion, should it no longer wish to continue to use any of the South Coast Lines for the provision of freight common carrier service, to seek regulatory authority to abandon and/or discontinue service over all or any segment of the South Coast Lines in accordance with the appropriate regulatory processes. In the event that Mass Coastal has not provided freight service over any segment of the South Coast Lines for a continuous period of eight (8) years, Mass Coastal will, upon the MBTA's request, seek appropriate regulatory approval to discontinue and/or abandon service over such segment. In the event that Mass Coastal has not provided freight service over a segment of the South Coast Lines for a continuous period of three (3) years, the MBTA may initiate abandonment and/or discontinuance proceedings with respect to such segment, provided however that Mass Coastal may oppose such proceedings and shall have no obligation to assist the MBTA in such proceedings.

3. Maintenance and Dispatching

- a. Prior to the Commencement of MBTA Reconstruction: Until the date of the commencement of the MBTA's material reconstruction of the South Coast Lines (the "Reconstruction Commencement Date"), Mass Coastal shall maintain, at its sole cost and expense, all rights-of-way, tracks, signals, communications equipment and all appurtenances on the South Coast Lines in a manner which meets or exceeds the applicable standard required by the rules and regulations promulgated by the Federal Railroad Administration to handle Mass Coastal's traffic and service level. Mass Coastal shall be responsible for dispatching the South Coast Lines.
- b. Subsequent to the Commencement of MBTA Reconstruction: As of the Reconstruction Commencement Date, the MBTA shall maintain all rights-of-way, tracks, bridges, culverts, signals, communications equipment and all appurtenances on the South Coast Lines in compliance with standards to be set from time to time by the MBTA which in all instances shall be appropriate for Mass Coastal's freight operations and, after the commencement of passenger service, for both passenger and freight rail operations and which shall always meet or exceed the applicable standard required by the rules and regulations promulgated by the Federal Railroad Administration for, at a minimum, Class 1 track. As of the Reconstruction Commencement Date, Mass Coastal shall pay the MBTA a car mile charge for each Mass Coastal railroad car or locomotive, whether or not loaded, that is moved along the South Coast Lines. As of the date of this letter, such amount shall be \$0.43 per car mile, which amount shall be subject to annual increases or decreases, beginning July 1, 2010, corresponding to increases or decreases in the cost of labor and material, excluding fuel, as reflected in the Annual Indices of Charge-Out Prices and Wage Rates (1977=100),

Series RCR, included in “AAR Railroad Cost Recovery Index” and supplements thereto, issued by the Association of American Railroads.

- c. Access to Surplus Property: For the period during which Mass Coastal performs maintenance of the South Coast Lines, the MBTA shall make available to Mass Coastal surplus property and materials salvaged from the MBTA’s maintenance of other right of way properties that the MBTA would otherwise dispose of as scrap property, for Mass Coastal’s use in the maintenance of the South Coast Lines.
- 4. Liability: The South Coast Operating Agreement shall contain provisions that allocate liability as generally set forth below:
  - a. Employees: Each party shall defend, indemnify, and save harmless the other party from any and all liability, damage or expense, including reasonable attorneys’ fees, arising out of injury to or death of the indemnifying party’s employees.
  - b. Property: Each party shall defend, indemnify, and save harmless the other party from any and all liability, damage or expense, including reasonable attorney’s fees, arising out of loss of, damage to, or destruction of the indemnifying party’s real or personal property.
  - c. Hazardous Materials: Notwithstanding any other provision herein to the contrary, each party shall defend, indemnify, and save harmless the other party from any and all liability, damage, or expense, including reasonable attorneys’ fees, arising out of injury to or death of any person, or arising out of loss of, damage to, or destruction of any property of either party, either party’s employees or any other person, resulting from the indemnifying party’s transportation or use of hazardous materials.
  - d. Passengers and Other Third Parties: Except as otherwise provided above, each party shall defend, indemnify, and save harmless the other party from any and all liability, damage, or expense, including reasonable attorneys’ fees, arising out of injury to or death of any person, or arising out of loss of, damage to, or destruction of any property of any person, resulting from the indemnifying party’s negligence or fault. If liability, damage or expense of any kind whatsoever arises as a result of the negligence or fault of both parties, or their respective employees or other contractors, the obligations of the parties to indemnify each other pursuant to the immediately preceding sentence shall be apportioned on the same basis as would arise under applicable common law and statutory principles of law concerning tort liability, contribution and indemnification.
  - e. Risk Management and Insurance: Prior to the execution of the South Coast Operating Agreement, the MBTA and Mass Coastal, working cooperatively, shall develop a risk management approach to their respective and joint liability for incidents arising from the joint passenger

and freight service on the South Coast Lines. Such risk management approach, which shall be described in and form a part of the South Coast Operating Agreement, shall be designed to realize efficiencies in insurance costs to preserve the financial viability of Mass Coastal's freight service. The South Coast Operating Agreement shall be consistent with the obligation of the parties under State of Maine, and shall reflect a risk management approach that considers and includes, without limitation: (1) options to reduce the risk of collision between passenger and freight traffic such as temporal separation of freight and passenger operations; (2) technical approaches such as positive train control; (3) strategies for obtaining liability insurance for operations that provides necessary coverage at a cost that is consistent with continued economic viability of the freight service; and (4) measures to provide that Mass Coastal has the benefit of the liability limitations of Mass. General Laws c.161A, §43.

- f. MBTA Warranties: The MBTA will warrant before it commences any passenger services on the South Coast Lines that it has legal authority to undertake the indemnities and commitments contained in this Section 4.

Upon the execution and delivery of the South Coast Operating Agreement by MassCoastal and the MBTA, the terms set forth herein shall have no further force or effect.

If this letter accurately sets forth your understanding of our agreement on these matters, please countersign a copy of the letter and return it to me. We look forward to continuing to work with you towards the consummation of the South Coast Operating Agreement and the commencement of Mass Coastal's freight service on the South Coast Lines.

Sincerely,

MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

  
By: William A. Mitchell  
Title: Acting General Manager

ACKNOWLEDGED AND AGREED TO  
BY MASSACHUSETTS COASTAL RAILROAD LLC

By: John F. Kennedy  
Title: President

and freight service on the South Coast Lines. Such risk management approach, which shall be described in and form a part of the South Coast Operating Agreement, shall be designed to realize efficiencies in insurance costs to preserve the financial viability of Mass Coastal's freight service. The South Coast Operating Agreement shall be consistent with the obligation of the parties under State of Maine, and shall reflect a risk management approach that considers and includes, without limitation: (1) options to reduce the risk of collision between passenger and freight traffic such as temporal separation of freight and passenger operations; (2) technical approaches such as positive train control; (3) strategies for obtaining liability insurance for operations that provides necessary coverage at a cost that is consistent with continued economic viability of the freight service; and (4) measures to provide that Mass Coastal has the benefit of the liability limitations of Mass. General Laws c.161A, §43.

- f. MBTA Warranties: The MBTA will warrant before it commences any passenger services on the South Coast Lines that it has legal authority to undertake the indemnities and commitments contained in this Section 4.

Upon the execution and delivery of the South Coast Operating Agreement by MassCoastal and the MBTA, the terms set forth herein shall have no further force or effect.

If this letter accurately sets forth your understanding of our agreement on these matters, please countersign a copy of the letter and return it to me. We look forward to continuing to work with you towards the consummation of the South Coast Operating Agreement and the commencement of Mass Coastal's freight service on the South Coast Lines.

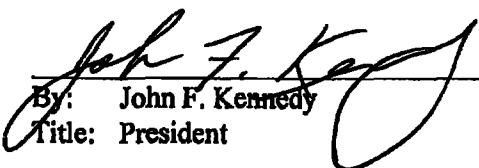
Sincerely,

MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

---

By: William A. Mitchell  
Title: Acting General Manager

ACKNOWLEDGED AND AGREED TO  
BY MASSACHUSETTS COASTAL RAILROAD LLC

  
By: John F. Kennedy  
Title: President

**EXHIBIT L**

*Effective* OCTOBER 26, 2009

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






































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R 4 30P	33		Croton-Harmon, NY	 D 5 07P	
R 6 20P	141	Ar	Albany-Rensselaer, NY	●   Dp	D 3 30P
 R235/291/255			Connecting Train at Albany-Rensselaer		 R 244
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3 52P	16	▼	Rhinecliff-Kingston, NY	●   D 5 01P	
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 R 449			Through Cars Boston-Chicago		 R 448
11 55A	0	Dp	Boston, MA—South Station	●   Ar	9 10P
R12 00N	1		Boston, MA—Back Bay Station	●   D 9 03P	
R12 28P	21	▼	Framingham, MA	○   D 7 35P	
12 58P	44	▼	Worcester, MA	●   D 6 57P	
2 10P	98	Ar	Springfield, MA	●   Dp	5 53P
2 15P		Dp			5 48P
3 36P	150		Pittsfield, MA	○   D 4 29P	
5 35P	199	Ar	Albany-Rensselaer, NY	●   Dp	3 25P
 R 7 05P	141	Dp	Albany-Rensselaer, NY	●   Ar	L 2 40P
7 31P	159		Schenectady, NY	●   D 1 50P	
8 44P	237	▼	Utica, NY	●   D 12 32P	
9 41P	291	▼	Syracuse, NY	●   D 11 25A	
11 00P	370		Rochester, NY	●   D 9 50A	
11 55P	431	Ar	Buffalo-Depew, NY	●   Dp	8 40A
11 59P		Dp			8 30A
1 38A	524		Erie, PA	○   D 6 54A	
3 27A	618	Ar	Cleveland, OH—Lakefront Station	●   Dp	5 20A
3 45A		Dp			5 05A
4 18A	643	▼	Elyria, OH (Lorain)	○   D 4 21A	
4 55A	678		Sandusky, OH	○   D 3 42A	
5 55A	725	Ar	Toledo, OH	●   Dp	2 50A
6 15A		Dp	 Detroit, E. Lansing—see back		2 20A
7 05A	779		Bryan, OH	○   D 1 10A	
7 33A	804		Waterloo, IN (Ft. Wayne)	○   D 12 45A	
8 25A	857	▼	Elkhart, IN	○   D 11 52P	
8 48A	875	▼	South Bend, IN (ET)	●   D 11 30P	
9 45A	959	Ar	Chicago, IL—Union Station (CT)	●   Dp	9 00P
			 Madison—see back		

### Service on the Lake Shore Limited\*

- ☑ **Coaches:** Reservations required.
- ☑ **Sleeping cars:** Viewliner sleeping accommodations
  - Amtrak Metropolitan Lounge/ClubAcela available in Chicago, New York and Boston for Sleeping car service passengers.
- ✕ **Dining:** Casual service offering complete meals and appetizers with an all day menu on Trains 48 and 49 between New York and Chicago. Not available between Albany and Boston; Sleeping car passengers will receive complimentary cold meal service.
- ☑ **Lounge:** Sandwiches, snacks and beverages. Combined Diner/Lounge provides food and beverage service between New York and Albany.

Smoking is prohibited.

### Scenic Highlights

- Hudson River Valley
- Berkshire Mountains
- Erie Canal
- Lake Erie
- Mohawk River Valley

Schedules subject to change without notice. Amtrak is a registered service mark of the National Railroad Passenger Corp. National Railroad Passenger Corporation Washington Union Station, 60 Massachusetts Ave. N.E., Washington, DC 20002

### Train 48 offers early boarding at Chicago

Although Train 48 is scheduled to depart Chicago at 9:00 p.m., Sleeping car passengers may board earlier and are invited to a Welcome Aboard reception for complimentary snacks and beverages in the Dining car. Please check with the agent in Chicago's Metropolitan Lounge for additional information.

### LAKE SHORE LIMITED ROUTE MAP and SYMBOLS

South Bend, IN  
Waterloo, IN  
Toledo, OH  
Elyria, OH  
Erie, PA  
Rochester, NY  
Utica, NY  
Albany-Rensselaer, NY  
Pittsfield, MA  
Springfield, MA  
Worcester, MA  
Framingham, MA  
Boston, MA (Back Bay Station)  
Boston, MA (South Station)  
Colon-Harmon, NY  
New York, NY  
Chicago, IL  
Elkhart, IN  
Bryan, OH  
Sandusky, OH  
Cleveland, OH  
Buffalo-Depew, NY  
Syracuse, NY  
Schenectady, NY



- A Time Symbol for A.M.
- N Time Symbol for Noon.
- P Time Symbol for P.M.
- D Stops only to discharge passengers; train may leave before time shown.
- R Stops only to receive passengers.
- CT Central time
- ET Eastern time
- Ⓜ Bus stop
- ☑ Checked baggage
- ☑ Quik-Trak self-serve ticketing kiosk
- Unstaffed station
- Staffed ticket office; may or may not be open for all train departures
- △ Station wheelchair accessible; no barriers between station and train
- ☑ Station wheelchair accessible; not all stations facilities accessible

### Shading Key

Reserved long-distance train	Thruway and connecting services
Connecting train	

## LAKE SHORE LIMITED is anything but for viewing AMERICA'S THIRD COAST.

COME AND "COAST" ALONG SOME OF OUR MOST BEAUTIFUL SHORELINES! See glacial hanging valleys, steeply dropping river tributaries, waterfalls; countless plant life varieties, the Berkshires — conjuring images of Norman Rockwell paintings — punctuated at each end by the skylines of Chicago and either Boston or New York.

Book your adventure on the Lake Shore Limited — it's a "shore" bet you'll love it!

AMTRAK



## Thruway Bus Connections

### Toledo • Detroit • East Lansing (Metrocars)

29/49	Connecting Train Number					30/48
6029/6049	Mile	▽	Thruway Number	Symbol	△	6030/6048
6 30A	0	Dp	Toledo, OH-Amtrak Station (ET)	●	Ar	11 00P
D 7 35A	58	Ar	Detroit, MI-Amtrak Station	●		R 9 55P
D 7 50A	65		Dearborn, MI-Amtrak Station	●		R 9 40P
D 8 40A	94		Ann Arbor, MI-Amtrak Station	●		R 8 50P
8 55A	132	Ar	East Lansing, MI-Amtrak Sta. (ET)	●	Dp	7 35P

### Chicago • Rockford • Madison

(Van Galder-transfers may be necessary)

8961	Mile	▽	Thruway Number	Symbol	△	8966
10 30A	0	Dp	Chicago, IL-Union Station (CT)	●	Ar	6 45P
12 10P	75	Ar	Rockford, IL		Dp	4 20P
12 30P	92		South Beloit, IL			3 55P
12 55P	105		Janesville, WI			3 30P
			Madison, WI			
1 35P	134		-Dutchmill Park & Ride			2 45P
1 50P	140	Ar	-Memorial Union-Univ. of Wisconsin (CT)		Dp	2 30P

See other side for Shading Key, Route Map and Symbols.

## Connecting Local Services

### Chicago Airport

Chicago Transit Authority (CTA) rapid transit trains provide frequent service to O'Hare and Midway Airports. Blue Line trains to O'Hare leave from the subway station at the corner of Clinton and Congress Streets, two blocks south of Union Station. Orange Line trains to Midway leave from the elevated station at the corner of Quincy and Wells streets, three blocks east of Union Station. Pay fare in CTA station. (312) 836-7000 or [www.transitchicago.com](http://www.transitchicago.com)

### New York Airport Connections

New York Airport Service provides Thruway motorcoach service between Pennsylvania Station, New York and both J.F. Kennedy and LaGuardia Airports. Coaches depart Pennsylvania Station to each airport every half hour from 7:40 a.m. to 8:10 p.m., daily. Allow at least an hour travel time to J.F. Kennedy or LaGuardia Airports. Call 1-800-USA-RAIL for more information.

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**EXHIBIT M**

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**FRAMINGHAM/WORCESTER LINE : Weekday Effective 05/18/09****AM Schedule**

Train Number AM	P500 AM	P502 AM	P504 AM	P506 AM	P508 AM	P510 AM	P512 AM	P514 AM	P516 AM	P518 AM
<b>Worcester / Union Station</b>	04:45	05:40	06:05	06:30	06:55		07:35		08:30	10:30
<b>Grafton</b>	05:00	05:54	06:19	06:44	07:09		07:49		08:43	10:43
<b>Westborough</b>	05:06	05:59	06:24	06:49	07:14		07:54		08:47	10:47
<b>Southborough</b>	05:16	06:08	06:33	06:58	07:23		08:03		08:56	10:56
<b>Ashland</b>	05:23	06:13	06:38	07:03	07:28		08:08		09:00	11:00
<b>Framingham</b>	05:35	06:25	06:50	07:15	07:40	08:00	08:19	08:40	09:11	11:11
<b>West Natick</b>	05:40	06:31	06:55	07:20	07:46	08:05	08:24	08:45	09:16	11:16
<b>Natick</b>	05:45		07:00	07:25	07:51	08:10	08:29	08:50	09:21	11:21
<b>Wellesley Square</b>	05:51		07:06	07:31		08:16	08:35	08:56	09:27	11:27
<b>Wellesley Hills</b>	05:55		07:10	07:35		08:20	08:39	09:00	09:31	11:31
<b>Wellesley Farms</b>	05:58		07:13	07:38		08:23	08:42	09:03	09:34	11:34
<b>Auburndale</b>	06:03		07:18	07:43		08:28		09:08		11:39
<b>West Newton</b>	06:06		07:21	07:46		08:31		09:11		11:42
<b>Newtonville</b>	06:10		07:25	07:50		08:35		09:15		11:45
<b>Yawkey</b>	06:20	06:57	07:35	08:00		08:45				
<b>Back Bay</b>	06:25	07:02	07:40	08:05	08:17	08:50	09:02	09:29	09:54	11:59
<b>South Station</b>	06:31	07:08	07:46	08:11	08:23	08:56	09:08	09:35	10:00	12:05

**PM Schedule**

Train Number PM	P520 PM	P522 PM	P524 PM	P526 PM	P528 PM	P530 PM	P532 PM	P534 PM	P536 PM	P538AM	P540AM
<b>Worcester / Union Station</b>			02:05	04:30		05:35			07:46		12:10
<b>Grafton</b>			02:18	04:43		05:48			07:59		12:22F
<b>Westborough</b>			02:22	04:47		05:52			08:03		12:26F
<b>Southborough</b>			02:31	04:56		06:01			08:12		12:34F
<b>Ashland</b>			02:35	05:00		06:05			08:16		12:38F
<b>Framingham</b>	12:20	02:09	02:46	05:11	05:40	06:16	06:43	07:45	08:27	12:31	12:48F
<b>West Natick</b>	12:25	02:14	02:51	05:16	05:45	06:21	06:48	07:50		12:36F	
<b>Natick</b>	12:30	02:19	02:56	05:21	05:50	06:26	06:53	07:55		12:40F	
<b>Wellesley Square</b>	12:35	02:24	03:02	05:27	05:56	06:32	06:59	08:01		12:45F	
<b>Wellesley Hills</b>	12:39	02:28	03:06	05:31	06:00	06:36	07:03	08:05		12:48F	
<b>Wellesley Farms</b>	12:42	02:31	03:09	05:34	06:03	06:39	07:06	08:08		12:51F	
<b>Auburndale</b>	12:47	02:36								12:55F	
<b>West Newton</b>	12:50	02:39								12:58F	
<b>Newtonville</b>	12:53	02:42								01:01F	
<b>Yawkey</b>	01:04	02:52				06:58					
<b>Back Bay</b>	01:09	02:57	03:29	05:59	06:24	07:03	07:26	08:28	08:56	01:17	01:24
<b>South Station</b>	01:15	03:03	03:35	06:05	06:30	07:09	07:32	08:34	09:02	01:23	01:30

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**FRAMINGHAM/WORCESTER LINE - INBOUND : Saturday Effective 05/18/09****AM Schedule**

Train Number AM	P550 AM	P552 AM	P554 AM
Worcester / Union Station		09:25	
Grafton		09:38	
Westborough		09:42	
Southborough		09:50	
Ashland		09:55	
Framingham	08:15	10:05	11:50
West Natick	08:19	10:09	11:54
Natick	08:24	10:14	11:59
Wellesley Square	08:29	10:19	12:04
Wellesley Hills	08:32	10:23	12:07
Wellesley Farms	08:35	10:26	12:10
Auburndale	08:40	10:31	12:15
West Newton	08:43	10:34	12:18
Newtonville	08:46	10:37	12:21
Yawkey		10:49	12:31
Back Bay	08:59	10:54	12:37
South Station	09:05	11:00	12:43

**PM Schedule**

Train Number PM	P556 PM	P558 PM	P560 PM	P562 PM	P564 PM	P566AM
Worcester / Union Station	02:35		06:20	08:00		12:50
Grafton	02:48		06:33	08:13		01:03
Westborough	02:52		06:37	08:17		01:07
Southborough	03:00		06:45	08:25		01:15
Ashland	03:05		06:50	08:30		01:19
Framingham	03:15	03:35	07:00	08:40	09:45	01:29
West Natick	03:19	03:39	07:04	08:44	09:49	01:33F
Natick	03:24	03:44	07:09	08:49	09:54	01:38F
Wellesley Square	03:29	03:49	07:14	08:54	09:59	01:43F
Wellesley Hills	03:32	03:52	07:18	08:57	10:02	01:46F
Wellesley Farms	03:35	03:55	07:21	09:00	10:05	01:49F
Auburndale	03:40	04:00	07:26	09:05	10:10	01:54F
West Newton	03:43	04:03	07:29	09:08	10:13	01:57F
Newtonville	03:46	04:06	07:32	09:11	10:16	02:00F
Yawkey		04:16	07:42			
Back Bay	03:59	04:22	07:46	09:24	10:28	02:10
South Station	04:05	04:28	07:52	09:30	10:34	02:16

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**FRAMINGHAM/WORCESTER LINE - INBOUND : Sunday Effective 05/18/09****AM Schedule**

Train Number AM	P552 AM	P554 AM
Worcester / Union Station	09:25	
Grafton	09:38	
Westborough	09:42	
Southborough	09:50	
Ashland	09:55	
Framingham	10:05	11:50
West Natick	10:09	11:54
Natick	10:14	11:59
Wellesley Square	10:19	12:04
Wellesley Hills	10:23	12:07
Wellesley Farms	10:26	12:10
Auburndale	10:31	12:15
West Newton	10:34	12:18
Newtonville	10:37	12:21
Yawkey	10:49	12:31
Back Bay	10:54	12:37
South Station	11:00	12:43

**PM Schedule**

Train Number PM	P556 PM	P558 PM	P560 PM	P562 PM	P564 PM	P566AM
Worcester / Union Station	02:35		06:20	08:00		12:50
Grafton	02:48		06:33	08:13		01:03
Westborough	02:52		06:37	08:17		01:07
Southborough	03:00		06:45	08:25		01:15
Ashland	03:05		06:50	08:30		01:19
Framingham	03:15	03:35	07:00	08:40	09:45	01:29
West Natick	03:19	03:39	07:04	08:44	09:49	01:33F
Natick	03:24	03:44	07:09	08:49	09:54	01:38F
Wellesley Square	03:29	03:49	07:14	08:54	09:59	01:43F
Wellesley Hills	03:32	03:52	07:18	08:57	10:02	01:46F
Wellesley Farms	03:35	03:55	07:21	09:00	10:05	01:49F
Auburndale	03:40	04:00	07:26	09:05	10:10	01:54F
West Newton	03:43	04:03	07:29	09:08	10:13	01:57F
Newtonville	03:46	04:06	07:32	09:11	10:16	02:00F
Yawkey		04:16	07:42			
Back Bay	03:59	04:22	07:46	09:24	10:28	02:10
South Station	04:05	04:28	07:52	09:30	10:34	02:16

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**FRAMINGHAM/WORCESTER LINE - OUTBOUND : Weekday Effective 05/18/09****AM Schedule**

Train Number AM	P501 AM	P503 AM	P505 AM	P507 AM	P509 AM	P511 AM
South Station	04:00	06:50	06:59	07:29	08:50	11:00
Back Bay	04:06	06:56	07:05	07:35	08:56	11:06
Yawkey						11:11
Newtonville						11:20
West Newton						11:24
Auburndale						11:27
Wellesley Farms					09:12	11:32
Wellesley Hills			07:24	07:55	09:15	11:35
Wellesley Square		07:16	07:28	07:59	09:19	11:39
Natick			07:34	08:05	09:25	11:45
West Natick		07:25	07:39	08:10	09:30	11:51
Framingham	04:40	07:30	07:45	08:16	09:35	11:57
Ashland		07:37			09:41	
Southborough		07:42			09:46	
Westborough		07:51			09:55	
Grafton	05:00	07:59			10:02	
Worcester / Union Station	05:19	08:14			10:16	

**PM Schedule**

Train Number PM	P513 PM	P515 PM	P517 PM	P519 PM	P521 PM	P523 PM	P525 PM	P527 PM	P529 PM	P531 PM	P533 PM	P535 PM	P537 PM	P539 PM
South Station	12:10	01:00	02:40	04:05	04:27	05:00	05:15	05:35	06:15	06:30	07:15	08:20	10:20	11:25
Back Bay	12:16	01:06	02:46	04:11	04:33	05:06	05:21	05:41	06:21	06:36	07:21	08:26	10:26	11:31
Yawkey					04:38		05:26	05:46		06:41	07:26	08:31	10:31	11:36
Newtonville	12:28	01:18	02:58		04:48		05:36	05:56		06:50	07:35	08:40	10:40	11:45
West Newton	12:32	01:21	03:01		04:52		05:40	06:00		06:54	07:39	08:44	10:44	11:49
Auburndale	12:35	01:24	03:04		04:55		05:43	06:03		06:57	07:42	08:47	10:47	11:52
Wellesley Farms	12:40	01:29	03:09		05:00		05:48	06:08		07:02	07:47	08:52	10:52	11:57
Wellesley Hills	12:43	01:32	03:12		05:03		05:51	06:11		07:05	07:50	08:55	10:55	12:00
Wellesley Square	12:47	01:36	03:16		05:07		05:55	06:15		07:09	07:54	08:59	10:59	12:04
Natick	12:53	01:42	03:22		05:13		06:01	06:21		07:15	08:00	09:05	11:05	12:10
West Natick	12:58	01:47	03:27	04:36	05:19	05:31	06:07	06:26	06:46	07:22	08:06	09:11	11:11	12:16
Framingham	01:03	01:53	03:33	04:42	05:25	05:37	06:13	06:31	06:52	07:28	08:11	09:16	11:16	12:21
Ashland	01:09		03:39	04:48		05:43		06:38	06:58		08:18	09:22	11:22	
Southborough	01:14		03:44	04:53		05:48		06:43	07:03		08:23	09:27	11:27	
Westborough	01:22		03:53	05:03		05:58		06:52	07:13		08:32	09:36	11:36	
Grafton	01:27		03:59	05:09		06:05		06:58	07:19		08:38	09:42	11:42	
Worcester / Union Station	01:41		04:13	05:24		06:20		07:13	07:34		08:52	09:56	11:56	

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**FRAMINGHAM/WORCESTER LINE - OUTBOUND : Saturday Effective 05/18/09****AM Schedule**

<b>Train Number AM</b>	<b>P551 AM</b>	<b>P553 AM</b>	<b>P555 AM</b>
<b>South Station</b>	07:00	07:40	10:45
<b>Back Bay</b>	07:06	07:46	10:51
<b>Yawkey</b>			
<b>Newtonville</b>	07:17	07:57	11:02
<b>West Newton</b>	07:20	08:00	11:05
<b>Auburndale</b>	07:23	08:03	11:08
<b>Wellesley Farms</b>	07:28	08:08	11:13
<b>Wellesley Hills</b>	07:31	08:11	11:16
<b>Wellesley Square</b>	07:34	08:14	11:19
<b>Natick</b>	07:39	08:19	11:24
<b>West Natick</b>	07:45	08:25	11:30
<b>Framingham</b>	07:51	08:30	11:37
<b>Ashland</b>		08:36	
<b>Southborough</b>		08:40	
<b>Westborough</b>		08:49	
<b>Grafton</b>		08:54	
<b>Worcester / Union Station</b>		09:09	

**PM Schedule**

<b>Train Number PM</b>	<b>P557 PM</b>	<b>P559 PM</b>	<b>P561 PM</b>	<b>P563 PM</b>	<b>P565 PM</b>	<b>P567 PM</b>
<b>South Station</b>	12:45	02:30	04:30	06:00	08:35	11:00
<b>Back Bay</b>	12:51	02:36	04:36	06:06	08:41	11:06
<b>Yawkey</b>	12:56		04:41	06:10		11:10
<b>Newtonville</b>	01:04	02:47	04:49	06:18	08:52	11:18
<b>West Newton</b>	01:07	02:50	04:52	06:21	08:55	11:21
<b>Auburndale</b>	01:10	02:53	04:55	06:24	08:58	11:24
<b>Wellesley Farms</b>	01:15	02:58	05:00	06:29	09:03	11:29
<b>Wellesley Hills</b>	01:18	03:01	05:03	06:32	09:06	11:32
<b>Wellesley Square</b>	01:21	03:04	05:06	06:35	09:09	11:35
<b>Natick</b>	01:26	03:09	05:11	06:40	09:14	11:40
<b>West Natick</b>	01:32	03:15	05:17	06:46	09:20	11:46
<b>Framingham</b>	01:37	03:21	05:22	06:51	09:26	11:51
<b>Ashland</b>	01:43		05:28	06:57		11:57
<b>Southborough</b>	01:47		05:32	07:02		12:01
<b>Westborough</b>	01:56		05:41	07:11		12:10
<b>Grafton</b>	02:02		05:47	07:16		12:15
<b>Worcester / Union Station</b>	02:17		06:02	07:31		12:30

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**FRAMINGHAM/WORCESTER LINE - OUTBOUND : Sunday Effective 05/18/09****AM Schedule**

Train Number AM	P553 AM	P555 AM
South Station	07:40	10:45
Back Bay	07:46	10:51
Yawkey		
Newtonville	07:57	11:02
West Newton	08:00	11:05
Auburndale	08:03	11:08
Wellesley Farms	08:08	11:13
Wellesley Hills	08:11	11:16
Wellesley Square	08:14	11:19
Natick	08:19	11:24
West Natick	08:25	11:30
Framingham	08:30	11:37
Ashland	08:36	
Southborough	08:40	
Westborough	08:49	
Grafton	08:54	
Worcester / Union Station	09:09	

**PM Schedule**

Train Number PM	P557 PM	P559 PM	P561 PM	P563 PM	P565 PM	P567 PM
South Station	12:45	02:30	04:30	06:00	08:35	11:00
Back Bay	12:51	02:36	04:36	06:06	08:41	11:06
Yawkey	12:56		04:41	06:10		11:10
Newtonville	01:04	02:47	04:49	06:18	08:52	11:18
West Newton	01:07	02:50	04:52	06:21	08:55	11:21
Auburndale	01:10	02:53	04:55	06:24	08:58	11:24
Wellesley Farms	01:15	02:58	05:00	06:29	09:03	11:29
Wellesley Hills	01:18	03:01	05:03	06:32	09:06	11:32
Wellesley Square	01:21	03:04	05:06	06:35	09:09	11:35
Natick	01:26	03:09	05:11	06:40	09:14	11:40
West Natick	01:32	03:15	05:17	06:46	09:20	11:46
Framingham	01:37	03:21	05:22	06:51	09:26	11:51
Ashland	01:43		05:28	06:57		11:57
Southborough	01:47		05:32	07:02		12:01
Westborough	01:56		05:41	07:11		12:10
Grafton	02:02		05:47	07:16		12:15
Worcester / Union Station	02:17		06:02	07:31		12:30



**EXHIBIT N**

## **Amendment #4 to CONRAIL/MBTA Trackage Rights Agreement of July 1, 1985**

This Amendment #4 (**"Amendment #4"**) to the Trackage Rights Agreement dated as of July 1, 1985, as previously amended (as so amended, the **"1985 Agreement"**), by and between the **CONSOLIDATED RAIL CORPORATION ("CONRAIL")** and the **MASSACHUSETTS BAY TRANSPORTATION AUTHORITY ("MBTA")** is entered into by and between **CSX TRANSPORTATION INC. ("CSXT")** and the **MBTA** this 23<sup>rd</sup> day of November, 2009, and is effective as of the Amendment #4 Effective Date (defined below).

### **BACKGROUND**

- A. The 1985 Agreement was entered into by the MBTA and CONRAIL to identify certain real property interests described therein and for the purpose of granting to each other certain rights to conduct passenger or freight rail services on property which they separately own or control.
- B. CSXT has succeeded to and currently holds and is responsible for the rights and obligations of CONRAIL including the real property interests identified in and with respect to the 1985 Agreement.
- C. CSXT and the Commonwealth of Massachusetts, acting by and through its Executive Office of Transportation and Public Works (the **"Commonwealth"**), entered into that certain Definitive Agreement, dated October 10, 2008, as amended by that certain First Amendment to Definitive Agreement dated as of November 23, 2009 (as so amended, the **"Definitive Agreement"**), whereby CSXT agreed to sell and the Commonwealth agreed to buy, subject to the terms and conditions of the Definitive Agreement, CSXT's interest in certain railroad properties, including, inter alia, (i) the Grand Junction Branch, (ii) the Boston Terminal Running Track, and (iii) all of CSXT's right title and interest to the Boston Main Line between Boston and Worcester, subject in each case to certain CSXT retained easement and other reserved rights (the **"Additional Assets"**; all as such properties are defined and described in the Definitive Agreement and on **Exhibit A** attached hereto and incorporated herein). This Amendment #4 shall be effective as of the actual date of the conveyance of the properties described in (i) and (ii) above (the **"Amendment #4 Effective Date"**). The actual date of the conveyance of the properties described in (iii) above is referred to herein as the **"Second Closing Date."**
- D. As of November 1, 2009, the Massachusetts Department of Transportation (**"MDOT"**) has by operation of law succeeded to all of the rights and obligations of the Executive Office of Transportation and Public Works to act by and on behalf of the Commonwealth under the Definitive Agreement.

- E. The Commonwealth has the right to designate, and has designated, the MBTA to act for and on behalf of, and to assume the rights and obligations of the Commonwealth, with respect to the Additional Assets under the Definitive Agreement.
- F. CSXT, for itself, and the MBTA, acting by and on behalf of the Commonwealth, wish to provide for the operation of their respective railroad services by amending the 1985 Agreement with respect to the Additional Assets.

## **AGREEMENT**

In consideration of the premises recited above, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, CSXT and the MBTA agree as follows:

- 1. As of the Amendment #4 Effective Date, Section 1.01, Recitals, is hereby amended by adding the following paragraph immediately following paragraph (f):

“(f ½) CSX Transportation Inc. (“CSXT”), CONRAIL’s successor in interest with respect to this Agreement, has conveyed by deed all of its interest in certain described railroad rights of way to the Commonwealth of Massachusetts, acting by and through its Department of Transportation (“MassDOT”), subject to CSXT’s retained, permanent, and exclusive freight easement, prior easement rights and other reservations described in the deed, including the terms of this Agreement, specifically (i) the Grand Junction Branch and (ii) the Boston Terminal Running Track. CSXT intends to convey by deed all of its interest in certain other described railroad rights of way to MassDOT, specifically the property known as the Boston Main Line between Boston and Worcester, subject to CSXT’s retained, permanent, and exclusive freight easement, prior easement rights and other reservations described in the deed to such property, subject to the terms of this Agreement and that certain 2009 Operating Agreement between CSXT and MBTA.”

- 2. As of the Amendment #4 Effective Date, Article 7 is hereby amended by adding the following paragraph as Section 7.08:

**“Section 7.08. Insurance**

MBTA shall secure and maintain the liability insurance policy required by Chapter 161A, Section 43 of the Massachusetts General Laws.”

- 3. As of the Amendment #4 Effective Date, Addendum 2 to the 1985 Agreement is hereby amended by deleting the Grand Junction Running Track. A revised Addendum 2 is attached hereto as **Exhibit B**, and shall replace the current Addendum 2.

4. As of the Amendment #4 Effective Date, Addendum 1 to the 1985 Agreement is hereby amended by adding thereto the Grand Junction Branch under Category A. From and after the Amendment #4 Effective Date, the Grand Junction Branch shall be a Category A MBTA Rail Property for all purposes under the 1985 Agreement.
5. As of the Amendment #4 Effective Date, Addendum 1 to the 1985 Agreement is hereby amended by adding thereto the Boston Terminal Running Track under Category A. From and after the Amendment #4 Effective Date, the Boston Terminal Running Track shall be a Category A MBTA Rail Property for all purposes under the 1985 Agreement. A revised Addendum 1 is attached hereto as **Exhibit C**, and shall replace the current Addendum 1.
6. As of the Second Closing Date, Addendum 2 to the 1985 Agreement shall be amended by deleting the Boston Line, Cove Control Point – Riverside, MA (MP 1.1 to MP 10.83) and the Boston Line, Framingham, MA (MP 21.38 to MP 22.4).
7. As of the Second Closing Date, Addendum 1 to the 1985 Agreement shall be amended by adding thereto the Boston Line, Cove Control Point – Riverside, MA (MP 1.1 to MP 10.83) and the Boston Line, Framingham, MA (MP 21.38 to MP 22.4) under Category A. From and after the Second Closing Date, the Boston Line, Cove Control Point – Riverside, MA and the Boston Line, Framingham, MA (MP 21.38 to MP 22.4) shall be Category A MBTA Rail Properties for all purposes under the 1985 Agreement.
8. As of the Second Closing Date, CSXT shall no longer maintain or dispatch the Boston Main Line and Sections 4.03 and 5.04 of the 1985 Agreement shall be deleted.

*[Signatures on following page.]*

IN WITNESS WHEREOF, the parties have caused this Amendment #4 to be signed with effect as of the Amendment #4 Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Name: William A. Mitchell  
Title: Acting General Manager

By: \_\_\_\_\_  
Name: Steven Potter  
Title: Assistant Vice President Network  
Planning and Joint Facilities

**APPROVAL AS TO FORM**

By: \_\_\_\_\_  
Name: Gerald K. Kelley  
Title: Acting General Counsel

*[Signature Page to Amendment #4 to 1985 Agreement]*

**Exhibit A**  
**EOT/CSXT Asset List**

	FACILITY SEGMENT (See Notes)	TOTAL FACILITY LENGTH / AREA		
		Mile Posts		Miles
		From	To	
1.	BOSTON MAIN LINE (Boston to Worcester)			
	South Station to CP Cove	0.0	1.12	
	CP Cove to BPY / ALS*	1.12	3.10	1.98
	Main Line @ BPY / ALS (See Note 2)*	3.10	4.80	1.70
	BPY to Newton (Riverside)*	4.80	10.83	6.03
	Newton (Riverside) to Framingham*	10.83	21.38	10.55
	Framingham	21.38	22.40	1.02
	Framingham to Worcester	22.40	44.30	21.90
	Total	0.00	44.30	44.30
2.	GRAND JUNCTION BRANCH (Boston to Chelsea)	From	To	
a.	BPY to Boston Engine Terminal (BET)	0.00	2.70	2.70
b.	Valley Track@BET*	2.70	2.95	0.25
c.	BET to Chelsea*	2.95	5.70	2.75
d.	Chelsea to East Boston (as CSXT's interest may appear)	5.7.0	7.87	2.17
	Total			7.87
3.	INTENTIONALLY DELETED			
4.	BOSTON TERMINAL RUNNING TRACK			
	Southampton St. to W. First Street	0.00	0.80	0.80
	W. First Street to Summer (including those portions of the W. First Street Yard shown on Exhibit A-1)	0.80	1.10	0.30
	Summer to BMIP*	1.10	2.25	1.15/2.2
	Total			

**NOTE:**

- The Railroad Lines are shown in more detail on the plans attached as **Exhibit A-1**.

2. The Parties acknowledge that the Second Closing, and the transaction with Harvard shall be coordinated so as to preserve to Seller (by way of a retained easement) the continued right to operate over the portion of the Boston Main Line passing through Beacon Park Yard (Parcel C-1, as the same may be redesignated).
- \* Segments marked with an asterisk are not owned by CSXT and are included solely for the convenience of EOT. CSXT makes no warranty of ownership or title to these segments, and reserves any Other Operating Rights therein.

## **Exhibit B**

*[Revised Addendum 2.]*



## **Exhibit C**

*[Revised Addendum 1.]*

IN WITNESS WHEREOF, the parties have caused this Amendment #4 to be signed with effect as of the Amendment #4 Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

APPROVAL AS TO FORM

*General Counsel*  
ACTING General Counsel

MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

By: *William A. Mitchell*  
Name: William A. Mitchell  
Title: ACTING GENERAL  
MANAGER

CSX TRANSPORTATION, INC.

By: \_\_\_\_\_  
Name: Steven Potter  
Title: Assistant Vice President Network  
Planning and Joint Facilities

[Signature Page to Amendment #4 to 1985 Agreement]

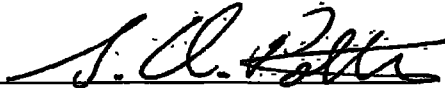
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IN WITNESS WHEREOF, the parties have caused this Amendment #4 to be signed with effect as of the Amendment #4 Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
Name: William A. Mitchell  
Title: Acting General Manager

**CSX TRANSPORTATION, INC.**

By:   
Name: Steven Potter  
Title: Assistant Vice President Network  
Planning and Joint Facilities

**APPROVAL AS TO FORM**

By: \_\_\_\_\_  
Name: Gerald K. Kelley  
Title: Acting General Counsel

*[Signature Page to Amendment #4 to 1985 Agreement]*